

13
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 722.

THE UNITED STATES, PLAINTIFF IN ERROR,

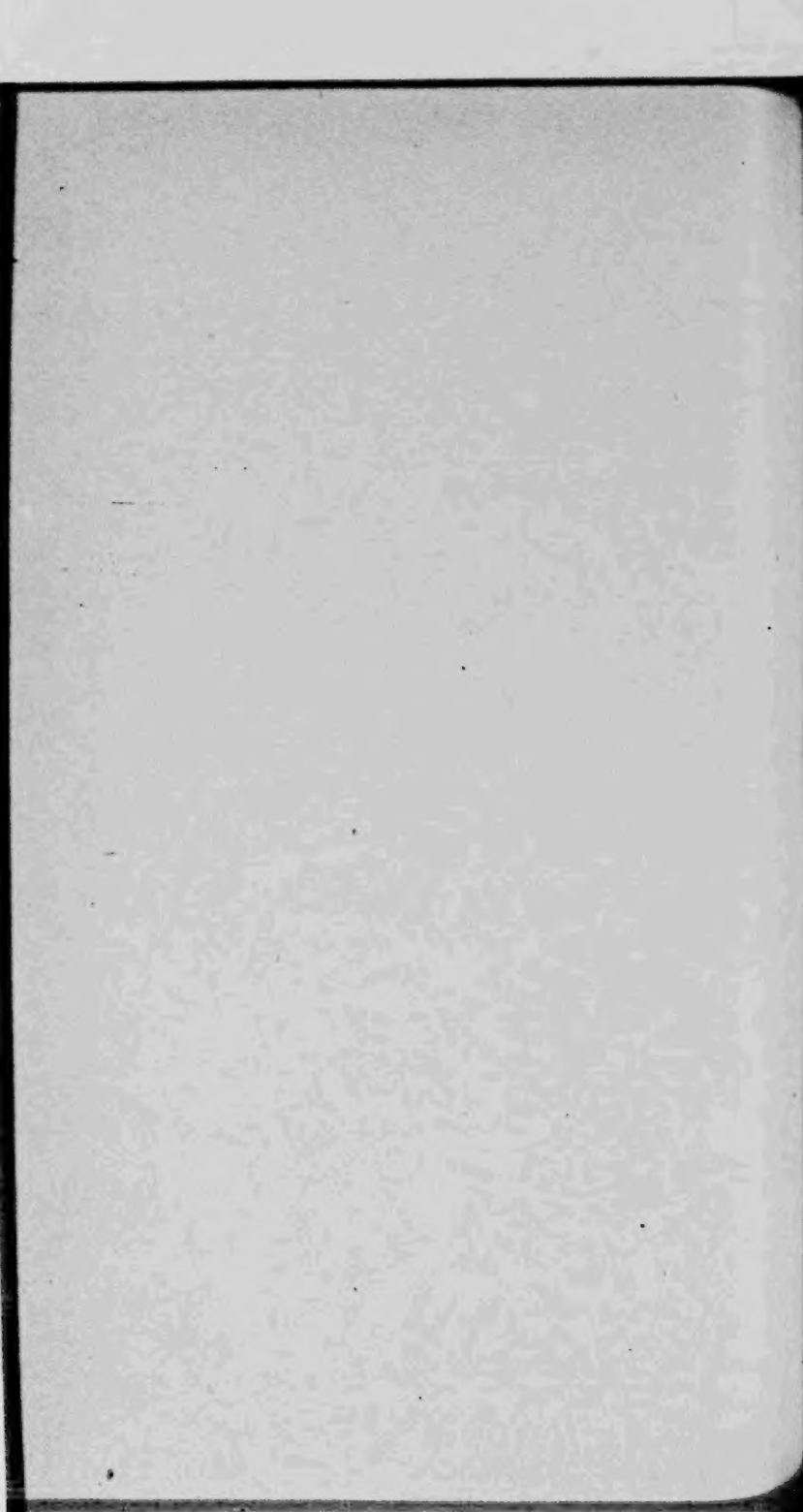
vs.

JOHN H. CARTER.

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NORTH CAROLINA.**

FILED SEPTEMBER 30, 1913.

(23873)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 722.

THE UNITED STATES, PLAINTIFF IN ERROR,

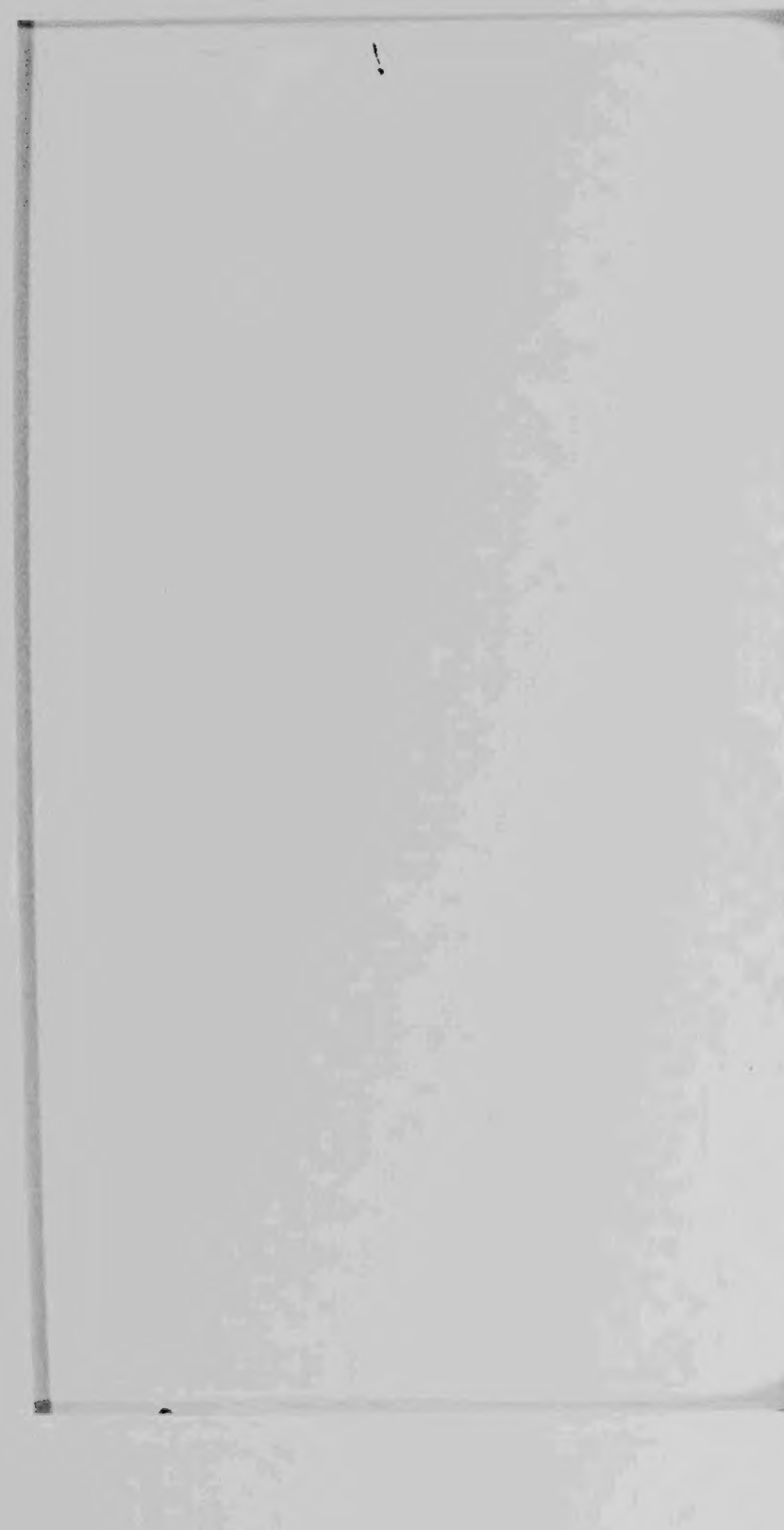
vs.

JOHN H. CARTER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Caption.....	a	1
Style of court.....	1	1
Organization of court at Greensboro.....	2	1
Order transferring case to Asheville.....	5	3
Organization of court at Asheville.....	6	4
Order to draw grand jury.....	8	6
Grand jury return of indictment.....	9	6
Order consolidating cases.....	10	7
Indictment found at Greensboro.....	11	8
Indictment found at Asheville.....	129	77
Motion to quash indictment (Asheville).....	178	113
Motion to quash indictment (Greensboro).....	182	115
Order granting time to prepare and serve bill of exceptions.....	185	117
Bill of exceptions.....	186	117
Order on demurrers.....	187	118
Judge's certificate to bill of exceptions.....	189	119
Assignment of errors.....	190	119
Petition for writ of error.....	192	120
Order allowing writ of error.....	193	121
Writ of error.....	194	121
Citation and service.....	195	122
Clerk's certificate.....	196	123



2

Transcript.

No. 1168	{ UNITED STATES <i>vs.</i> JOHN H. CARTER	} Consolidated.
No. 1236		
	{ UNITED STATES <i>vs.</i> JOHN H. CARTER	

1 *Style of court.*

THE UNITED STATES OF AMERICA,

Western District of North Carolina, to wit:

At a district court of the United States begun and held at the courthouse in the city of Asheville, N. C., on the 7th day of August in the year of our Lord one thousand nine hundred and thirteen.

Present: The Honorable Jas. E. Boyd, district judge for the Western District of North Carolina.

Among other were the following proceedings, to wit:

No. 1168	{ UNITED STATES <i>vs.</i> JOHN H. CARTER	{ Indictment. Violation section 5209, R. S.	} Consolidated.
No. 1236			
	{ UNITED STATES <i>vs.</i> JOHN H. CARTER	{ Indictment. Violating national bank law.	

2 *Organization court, Greensboro.*

U. S. District Court, Asheville, N. C. Filed Aug. 4, 1913. J. M. Millikan, clerk.

UNITED STATES OF AMERICA,

Western District of No. Carolina.

Be it remembered that at a regular term of the United States District Court for the Western District of North Carolina, begun, opened, and held in the city of Greensboro, on the 2nd day of December, A. D. 1912.

Present: Hon. Jas. E. Boyd, U. S. dist. judge, presiding.

Present also Hon. A. L. Coble, assistant U. S. attorney; Wm. E. Logan, Esq., U. S. marshal; and J. M. Millikan, clerk of said court.

Court opened in due form by John O. Murrow, court crier.

Among others were the following proceedings, to wit:

UNITED STATES OF AMERICA,

Western District of North Carolina.

District Court, Greensboro, N. C.

The President of the United States of America, to the marshal of the Western District of North Carolina, greeting:

You are hereby commanded to summon the persons whose names are hereto annexed, citizens and residents of said district, to be and

appear on the first Monday in December next, to serve as jurors in the District Court, to be held in the city of Greensboro, to be and remain until discharged according to law.

Herein fail not and make due return of this writ.

Witness, the Honorable Jas. E. Boyd, judge of the District Court of the United States, at Greensboro, North Carolina, in (SEAL.) said district, the 2nd day of November, A. D. 1912, and in the one hundred and thirty seventh year of the Independence of the United States.

3 Issued the 2nd day of November, A. D. 1912,

J. M. MILLIKAN, *Clerk.*

No.	Name.	Post office.	County.	State.
1	Luile Lloyd	Chapel Hill, R. F. D. 3	Orange	North Car.
2	J. M. Tuttle	Rural Hall, R. F. D.	Forsyth	"
3	John Hamner	Effland, R. F. D.	Orange	"
4	W. A. Bogum	Mt. Gilead, R. F. D.	Montgomery	"
5	D. E. Wagoner	Garrisonville	Guilford	"
6	Chas. H. Dorsett	Greensboro	Rockingham	"
7	Steve H. Ware	Reidsville	Surry	"
8	G. W. Oakley	Round Peak, R. F. D.	Montgomery	"
9	Eli Freeman	Elber	Orange	"
10	A. J. Gordon	Hillsboro	Forsyth	"
11	V. R. Bedecock	Abbotts Creek	"	"
12	Henry Harper	Winston-Salem	Caswell	"
13	J. B. McMullen	Hightowers	Alamance	"
14	L. W. Holt	Burlington	Surry	"
15	N. J. Martin	Dobson, R. F. D.	Davidson	"
16	J. L. Hohn	Lexington, R. F. D. 2	Guilford	"
17	John C. Kennett	Pleasant Garden	Davidson	"
18	Josey Gallimore	Lexington	Rockingham	"
19	J. W. Ferguson	Madison, R. F. D. 2	Montgomery	"
20	R. A. Bruton	Mt. Gilead	Caswell	"
21	J. D. Butler	Leasburg	Randolph	"
22	C. E. Duncan	Liberty	Forsyth	"
23	Chester Morris	Kernersville, R. F. D.	Alamance	"
24	J. H. McClure	Haw River	Guilford	"
25	J. M. Herbin	Altamahaw, R. F. D. 1	Yadkin	"
26	J. H. Sailer	East Bend	Guilford	"
27	W. O. Atkins	Odell	Rockingham	"
28	R. L. Stone	Stoneville	Stokes	"
29	Jas. W. Jones	Pinnacle, R. F. D. 2	Guilford	"
30	Chas. H. Northam	Greensboro, R. F. D.	Forsyth	"
31	A. C. Wharton	Chenmora-ville	Montgomery	"
32	J. G. Tomlinson	Troy	Forsyth	"
33	Eugene Linville	Rebels Creek	Randolph	"
34	W. M. Mohitt	Mohitt	Davidson	"
35	Milton Pezcar	Silver Hill, R. F. D.	Guilford	"
36	H. W. Lambeth	Brown Summit	Davidson	"
37	Thos. Tysinger	Denton	Caswell	"
38	C. K. Thompson	Milton	Forsyth	"
39	M. C. Reeves	Winston-Salem	Davidson	"
40	C. D. Schreier	Thomasville, R. F. D.	Rockingham	"
41	Rubin W. Roberts	Reidsville, R. F. D.	"	"
42	Jas. W. Newman	Spry	Guilford	"
43	H. Clay Brittain	Summerfield	Davidson	"
44	J. L. Nelson	Chenmora, R. F. D.	Forsyth	"
45	R. E. Dalton	Winston-Salem	Forsyth	"
46	John W. Shamel	Old Richmond	Forsyth	"
47	D. M. Hohn	High Point, R. F. D.	Guilford	"
48	E. M. Tucker	Morgantown	Montgomery	"
49	E. P. Trudon	Hillsboro, R. F. D.	Orange	"
50	Jas. H. Johnson	Liberty	Randolph	"
51	J. T. F. Beck	Kanaw	"	"
52	R. L. Perdue	Thomasville, R. F. D.	Davidson	"
53	Jas. H. Nelson	Danbury, R. F. D. 1	Stokes	"
54	Thomas B. Bailey	Stokesdale, R. F. D.	Rockingham	"

November 29, 1912, venire returned endorsed "Received Nov. 4, 1912. Executed Nov. 4, 1912, by mailing a summons to each of the

withinnamed jurors, and all have accepted service, except No. 35, M. Feezar; summons returned unclaimed. No. 44, J. L. Nelson, summons not returned. No. 50, J. H. Johnson, excused by the court.

"WM. E. LOGAN, *T. S. M.*

"By R. L. BLAYLOCK, *D. M.*"

Ordered by the court that a grand jury of 21 men be drawn and sworn.

The following are drawn and sworn:

J. B. McMullen, W. M. Mollitt, J. D. Butler, J. H. McClure, Hosey Gallimore, Steve H. Ware, A. J. Gordon, D. M. Hohn, J. H. Lambeth, J. M. Herbin, Ruffin W. Roberts, Jas. W. Ferguson, C. E. Duncan, Thos. W. Bailey, J. L. Hohn, R. L. Pardue, M. C. Reeves, John W. Shamel, N. J. Martin, W. O. Atkins, Jas. W. Newman.

Ordered by the court that A. J. Gordon be sworn as foreman of the grand jury.

I, J. M. Millikan, clerk of the United States District Court for the Western District of North Carolina, do hereby certify that the foregoing are true and perfect copies of the organization of the court at December term, 1912, venire, names of grand jury as drawn, and appointment of foreman of grand jury, as appears from the records of this office.

In testimony whereof, I hereunto set my hand and seal at office in the city of Greensboro, on this the 2nd day of August, A. D. 1913.

J. M. MILLIKAN,

Clerk U. S. District Court.

5

Order transferring case to Asheville.

U. S. District Court, Asheville, N. C. Filed Dec. 31, 1912. J. M. Millikan, clerk.

In the United States District Court at Greensboro, N. C. December term, 1912.

UNITED STATES OF AMERICA, WESTERN
District of North Carolina,

vs.

JOHN H. CARTER, BUNCOMBE COUNTY.

No. 5441. Indictment for
violating section 5209, R.
S. U. S.

The grand jury in a body comes into open court and the several names of the individual members of the grand jury being called by the clerk, they all respond and are present, and thereupon the grand jury, through the foreman, presents in open court the following bill of incitement. Endorsement: A true bill. A. J. Gordon, foreman.

December 7, 1912, case is called for hearing.

Upon motion of the U. S. district attorney, it is ordered by the court that a capias be issued for the defendant returnable to the May term, U. S. district court at Asheville.

Upon motion of the U. S. district attorney, it is ordered by the court that a subpoena be issued for A. E. Radert, L. L. Jenkins, J. G. Merriman, and P. P. Brown, U. S. witnesses returnable to May term, 1913, at Asheville.

Upon motion of the U. S. district attorney, it is ordered by the court that this case be continued.

Upon motion of the district attorney, it is ordered by the court that this case, together with the original papers and a certified copy of docket entries be transferred to the United States district court at Asheville, N. C. Dec. 7, capias issued. Dec. 15, 1912, subpoena issued. And the case is transferred accordingly. A true copy of the docket entries and order for transfer.

Test:

[SEAL.]

J. M. MILLIKAN, *Clerk.*

6 *Organization of United States District Court at Asheville,
May 5, term, 1913.*

MONDAY, MAY 5, 1913.

Be it remembered that a regular term of the U. S. District Court of the United States is opened and held in the city of Asheville, N. C., this May 5, 1913.

Present and presiding: Hon. Jas. E. Boyd, U. S. judge.

Present: Hon. A. E. Holton, U. S. attorney, and Hon. A. L. Coble, asst. district attorney.

Present: Hon. W. E. Logan, U. S. marshal.

Present: J. M. Millikan, clerk of said court, by W. S. Hyams, deputy clerk, when and where the following proceedings are had, to wit:

U. S. District Court, Asheville, N. C. Filed Apr. 30, 1913. J. M. Millikan, clerk.

THE UNITED STATES OF AMERICA.

Western District of North Carolina, ss:

The President of the United States of America to the marshal of the Western District of North Carolina, greeting:

You are hereby commanded to summon fifty-four good and lawful men, citizens of the Western District of North Carolina, a list of whose names are hereto annexed as drawn, to attend and serve as jurors at the next term of the District Court of the United States, to be held at Asheville, in said district, on the 1st Monday of May, 1913, next.

Herein fail not and have you then and there this writ, together with the manner of the service of the same.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Asheville, in [SEAL.] said district, this the 1st day of April, 1913 A. D., and in the 137th year of American Independence.

J. M. MILLIKAN,
Clerk.

By W. S. HYAMS,
Deputy Clerk, U. S. District Court.

Name.	Post office.	County.
1 F. P. Ingle.....	Asheville.....	Buncombe.
2 P. B. Gibbs.....	Andersonville, R. F. D.....	Henderson.
3 Jno. L. Mulkey.....	Brady.....	Cherokee.
4 S. L. Morgan.....	Candler.....	Buncombe.
5 D. S. Clark.....	Marshall, R. F. D. No. 3.....	Madison.
6 C. E. Padgett.....	Asheville.....	Buncombe.
7 J. R. Hyatt.....	Waynesville.....	Haywood.
8 A. J. Williams.....	Hendersonville.....	Henderson.
9 R. B. Williams.....	Fairview.....	Buncombe.
10 G. F. Stradley.....	Asheville.....	Buncombe.
11 J. P. Patton.....	Flat Rock.....	Henderson.
12 J. B. Patterson.....	Hendersonville, R. F. D.....	Henderson.
13 Samuel C. Buchanan.....	Glenville.....	Jackson.
14 R. L. Penland.....	Clyde.....	Haywood.
15 W. E. Brooks.....	Candler.....	Buncombe.
16 James Turpin.....	Dillsboro.....	Jackson.
17 Benjamin Fox.....	Ranger.....	Cherokee.
18 James Franklin.....	Burton.....	Yancey.
19 Weaver Ferguson.....	Crabtree.....	Haywood.
20 A. M. Wall.....	Needmore.....	Swain.
21 W. B. Dobson.....	Franklin.....	Macon.
22 N. A. Wood.....	Gneiss.....	Macon.
23 Pinekey Welch.....	Janati.....	Graham.
24 S. J. Brown.....	Burnesville.....	Yancey.
25 J. A. Cook.....	Robbinsville.....	Graham.
26 Adolphus E. Freeman.....	Asheville.....	Buncombe.
27 William Parker.....	Weaverville.....	Buncombe.
28 J. F. Wilkes.....	Franklin.....	Macon.
29 J. W. Neely.....	Asheville.....	Buncombe.
30 Charlie Fulton.....	Cullasaga.....	Macon.
31 M. S. Rickman.....	Arden.....	Buncombe.
32 J. S. Williams.....	Fairview.....	Buncombe.
33 Lee Sams.....	Grantville.....	Buncombe.
34 James Woods.....	Wolf Mountain.....	Jackson.
35 A. S. Edney.....	Hendersonville, R. F. D.....	Henderson.
36 Alexander Ownbey.....	Tuckasegee.....	Graham.
37 Cornelius Hunter.....	Marshall, R. F. D. 1.....	Madison.
38 R. P. Brittain.....	Weaverville.....	Buncombe.
39 W. T. Weaver.....	Asheville.....	Buncombe.
40 J. A. Gillespie.....	East Fork.....	Transylvania.
41 J. L. Allen.....	Fletcher, R. F. D.....	Henderson.
42 Philo Shelton.....	Marshall.....	Madison.
43 Cal Lord.....	Aptone.....	Jackson.
44 B. E. Wilson.....	Fallett.....	Buncombe.
45 Frank Randall.....	Canto.....	Macon.
46 Tom Roper.....	Franklin.....	Buncombe.
47 J. M. Thomas.....	Black Mountain.....	Henderson.
48 Frank Smith.....	Fletcher.....	Jackson.
49 Love Hyatt.....	Gay.....	Cherokee.
50 Z. R. Lovingood.....	Murphy, R. F. D. 1.....	Buncombe.
51 S. O. Ingram.....	Arden.....	Henderson.
52 S. C. Stilton.....	Horseshoe, R. F. D.....	Swain.
53 W. S. Hughes.....	Seph.....	Haywood.
54 James B. Rogers.....	Waynesville, R. F. D. 3.....	

Endorsed: Western District, North Carolina, office of U. S. marshal. Received April 2, 1913. No. 1811. Greensboro, N. C. U. S. District Court, Asheville, N. C. Venire. Returnable to May term, 1913. Rec'd Apr. 2, 1913. Ex. Apr. 2, 1913, by mailing to

each of the within-named jurors a summons, and all have accepted service but the following: Adolphus E. Freeman, A. M. Wall, out of State; M. S. Rickman, Alexander Owenby, returned unclaimed; Love Hyatt, excused by order Judge Boyd; Philo Shelton, R. P. Brittain, summons not ret'd. Wm. E. Logan, United States marshal, J. T. Garner, D. M.

Order to draw grand jury.

In the District Court of the United States for the Western District of North Carolina, at Asheville, May term, 1913.

54 jurors having been duly drawn by the clerk and the jury commissioner for service at this term of the court, and 45 of said jurors being now actually upon attendance, it is—

Ordered that 19 of said jurors be drawn in the usual way and that they be sworn and impanelled as grand jurors. This May 5, 1913.

JAS. E. BOYD,

U. S. Judge.

Grand jury.

The following grand jury is drawn from the hat by a boy under ten years of age, who can neither read nor write, to wit:

1, Tom. Roper; 2, Cornelius Hunter; 3, R. L. Penland; 4, James Turpin; 5, Jno. L. Mulkey; 6, D. S. Clark; 7, F. P. Ingle; 8, S. J. Brown; 9, J. L. Allen; 10, James B. Rogers; 11, Wm. Parker; 12, Pinckney Welch; 13, J. R. Hyatt; 14, A. J. Williams; 15, E. C. Padgett; 16, J. A. Cook; 17, Frank Smith; 18, J. B. Lovingood; 19, G. F. Stradley.

It is ordered by the court that F. P. Ingle be appointed as foreman of the grand jury for this May term, 1913.

It is ordered by the court that F. P. Ingle be sworn in as foreman of the grand jury by the clerk, and he is sworn accordingly.

It is ordered by the court that the clerk swear the remaining men composing the grand jury. They are sworn by the clerk accordingly.

MAY 13, 1913.

The entire body of the grand jury comes into open court, are called by the clerk, answer to their names, and thereupon through their foreman present to the court the following bill of indictment, to wit:

UNITED STATES	} No. 1236. Indictment. Violating national bank-
<i>vs.</i>	
JOHN H. CARTER.	ing law.

A true bill.

F. P. INGLE, *Foreman.*

10

Order consolidating cases.

AUGUST 4, 1913.

UNITED STATES	{	No. 1168. Ind. Violating national banking laws.
vs.		
JOHN H. CARTER.		

The case was called for hearing, and the defendant, John H. Carter, is present in person at the bar of the court.

The United States attorney moves the court to consolidate the two indictments, whereupon it is ordered by the court that the two indictments found are on the same transaction be consolidated without prejudice to any rights of the defendant as to the indictments separately or the counts thereof.

11

Indictment.

U. S. District Court, Asheville, N. C. Filed December 31, 1912.
J. M. Millikan, clerk.

District Court of the United States, Western District of North Carolina, at Greensboro, December term, 1912.

The grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 7th day of April, 1910, and on other days, both before and since said date at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States; that he, the said John H. Carter, so then and there on the date first aforementioned, being president as aforesaid, did then and there at said city of Asheville and county of Buncombe, in the district aforesaid, on, to wit, the 7th day of April, 1910, wilfully, wrongfully, unlawfully, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors and committees, draw and cause to be drawn upon said banking association his individual check, in printing and writing, dated 7th day of April, 1910, authorizing and directing said banking association to pay to the order of C. J. Harris the sum of five thousand dollars; that he, the said John H. Carter, being president, as aforesaid, on, to wit, the 7th day of April, 1910, at said city of Asheville, in the county of Buncombe, in the district aforesaid, wilfully, wrongfully, and unlawfully, and with intent to injure and defraud

said banking association, and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors, and committees, and by virtue of his official relations as president as aforesaid of said banking association, and by virtue of the power of control, direction, and management which he as such president aforesaid possessed over the moneys, funds, and credits of said banking association then and there paid and caused to be paid to the said C. J. Harris and to certain persons to the grand jurors unknown upon and pursuant to the directions and authorization contained in said check from and out of the moneys, funds, and credits then and there belonging to the property of said banking association the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out, being to the grand jurors unknown, can not therefore be here given; that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, and unlawfully appropriated and converted to the individual use and benefit of him, the said C. J. Harris, and the said unknown persons to whom the same was paid as aforesaid and was thereby wholly lost to the said banking association; that on, to wit, the 5th day of April, 1910, when the said check was drawn and caused to be drawn as aforesaid, as well as on, to wit, the 5th day of April, 1910, when said check was paid and caused to be paid as aforesaid, the said John H. Carter being then and there president of said banking association at said city of Asheville and county of Buncombe, in the district aforesaid, had then and there no moneys, funds, and credits on deposit to his individual credit with said banking association; that his individual account as a depositor with said banking association was then and there overdrawn by many hundred of dollars; that there was not then and there due and owing to him from said banking association any moneys, funds, and credits whatever; that the repayment of the said sum of five thousand dollars to said banking association was not then and there in any way secured; that he then and there had no right to draw any moneys, funds, and credits from said banking association; that he and said unknown persons had no right to receive and convert said sum to his and their own use and benefit; that said check was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors, and committees, all of which he, the said John H. Carter, then and there well knew.

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter as aforesaid, in the manner and form, and by the means, and for the use and benefit, and with the intent and without the knowledge and consent aforesaid five thousand dollars of said moneys, funds and credits, of said banking association, wrongfully and unlawfully did, then and there, wilfully misapply

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

2nd count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 16th day of February, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designed as The American National Bank of Asheville, which said banking association had been theretofore created, organized and established and was then existing and doing a banking business at the city of Asheville and county of Buncombe in the district aforesaid under the laws of

14 the United States: that he, the said John H. Carter, so then and there on the date first aforementioned being president as aforesaid, did, then and there, at said city of Asheville, and county of Buncombe, in the district aforesaid, on, to-wit, the 11th day of February, 1910, wilfully, wrongfully, unlawfully, and with intent to injure and defraud said banking association, and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, draw and cause to be drawn upon said banking association his individual check, in printing and writing, dated 11th day of February, 1910, authorizing and directing said banking association to pay to the order of W. P. Dorrough the sum of twenty-five hundred dollars; that he the said John H. Carter being president, as aforesaid, on, to-wit, the 16th day of February, 1910, at said city of Asheville, in the county of Buncombe, in the district aforesaid, wilfully, wrongfully, and unlawfully, and with intent to injure and defraud said banking association, and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid, of said banking association, and by virtue of the power of control, direction, and management which he, as such president aforesaid, possessed over the moneys, funds, and credits of said banking association, then and there paid, and caused to be paid to the said W. P. Dorrough, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said check, from and out of the moneys, funds, and credits then and there belonging to the property of said banking association, the sum of twenty-five hundred dollars, a more particular description of the moneys, funds, and credits of the said banking association, so paid out, being to the

15 grand jurors unknown, cannot, therefore, be here given: that the said sum of twenty-five hundred dollars, so paid and caused to be paid as aforesaid was, then and there, wilfully, wrongfully, and unlawfully appropriated and converted to the individual use and benefit of him, the said W. P. Dorrough and the said unknown

persons to whom the same was paid, as aforesaid, and was thereby wholly lost to the said banking association; that on, to-wit, the 11th day of February, 1910, when the said check was drawn, and caused to be drawn, as aforesaid, as well as on, to-wit, the 16th day of February, 1910, when said check was paid, and caused to be paid, as aforesaid, the said John H. Carter, being then and there president of said banking association, at said city of Asheville, and county of Buncombe, in the district aforesaid, had, then and there no moneys, funds, and credits on deposit to his individual credit with said banking association; that his individual account as a depositor with said banking association was then and there overdrawn by many hundreds of dollars; that there was not, then and there, due and owing to him from said banking association any moneys, funds, and credits whatever; that the repayment of the said sum of twenty-five hundred dollars to said banking association was not, then and there, in any way secured; that he, then and there, had no right to draw any moneys, funds, and credits from said banking association; that he and said unknown persons had no right to receive and convert said sum to his and their own use and benefit; that said check was drawn, and caused to be drawn, and was paid, and caused to be paid, as aforesaid, with intent to injure and defraud said banking association, and divers persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, all of which he, the said John H. Carter, then and there, well knew.

And so the grand jurors aforesaid, upon their oath aforesaid, 16 do say: That he, the said John H. Carter as aforesaid, in the manner and form, and by the means, and for the use and benefit, and with the intent and without the knowledge and consent aforesaid twenty-five hundred dollars of said moneys, funds and credits, of said banking association, wrongfully and unlawfully did, then, and there, willfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

3rd count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 27th day of December, 1909, and on other days, both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid did then and there willfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking

association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power and control, direction, and management, which he, as president as aforesaid, possessed over the moneys, funds, and credits of the said banking association, draw and caused to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the National Exchange Bank, Baltimore, Md., its correspondent, a certain draft signed by R. M. Fitzpatrick, cashier, in printing and writing, dated on the 27th day of December, 1909, authorizing and directing the said National Exchange Bank to pay to the order of John H. Carter the sum of five thousand dollars out of the moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing as aforesaid, he, the said R. M. Fitzpatrick, as such cashier having authority thereby to cause and direct the payment thereof; that the said John H. Carter being president as aforesaid on the day and year aforesaid at and in said district and within the jurisdiction of this court, did willfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction, and management which he, as such president aforesaid, possessed over the moneys, funds, and credits of the said banking association, then and there pay and cause to be paid to the said John H. Carter, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the said National Exchange Bank as aforesaid, and under the direction and control of the said John H. Carter, as president of The American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown can not, therefore, be here given: that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there willfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the said was so paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as aforesaid, as well as on or about the 3rd day of January, 1910, when said draft was paid and caused to be paid, as aforesaid, the said John H. Carter then and there gave nothing of value therefor, that the repayment of the said sum of five thousand dollars to said banking association was not then

and there in any way secured, that he then and there had no right to draw said money, funds, and credits from said banking association; that they the said unknown persons had no right to receive and convert the said sum to his and there own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors and committees, all of which the said John H. Carter then and there well knew.

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, five thousand dollars of the said moneys, funds, and credits of said banking association wrongfully and unlawfully and feloniously did, then and there, wilfully misapply, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

19 14th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 27th day of December, 1909, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there, on the day first above mentioned, being president as aforesaid, did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power and control, direction and management which he, as president as aforesaid, possessed over the moneys, funds, and credits of the said banking association, draw and caused to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the National City Bank, Washington, D. C., its correspondent, a certain draft signed by R. M. Fitzpatrick, cashier, in printing and writing, dated on the 27th day of December, 1909, authorizing and directing the said National City Bank to pay to the order of John H. Carter the sum of five thousand dollars out of the moneys, funds, and credits belonging to the said American

20 National Bank of Asheville, on deposit and existing as aforesaid, he, the said R. M. Fitzpatrick, as such cashier, having authority thereby to cause and direct the payment thereof; that the said John H. Carter, being president as aforesaid, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors, and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction, and management which he, as such president aforesaid, possessed over the moneys, funds, and credits of the said banking association, then there pay and caused to be paid to the said John H. Carter and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the said National City Bank as aforesaid, and under the direction and control of the said John H. Carter, as president of The American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown, can not, therefore, be here given; that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and

21 year aforesaid, when said draft was drawn and caused to be drawn as aforesaid, as well as on the 3rd day of January, 1910, when said draft was paid and caused to be paid as aforesaid, the said John H. Carter then and there gave nothing of value therefor; that the repayment of the said sum of five thousand dollars to said banking association was not then and there in any way secured; that he then and there had no right to draw said money, funds, and credits from said banking association; that they, the said unknown persons, had no right to receive and convert the said sum to his and there own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid, with intent to injure and defraud said banking association and divers persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees; all of which the said John H. Carter then and there well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, five thousand dollars of the said moneys, funds, and credits of said banking associa-

tion wrongfully, and unlawfully, and feloniously did, then and there, wilfully mis-apply, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

5th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 23rd day of February, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as the American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned, being president as aforesaid, did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association, and by virtue of the power and control, direction and management, which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, draw and cause to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the Hanover National Bank, New York City, its correspondent, a certain draft signed by R. M. Fitzpatrick, cashier in printing and writing, dated on the 23rd day of February, 1910, authorizing and directing the said Hanover National Bank to pay to the order of Hanover Natl. Bank, New York, the sum of six thou-and dollars out of the moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing as aforesaid, he the said R. M. Fitzpatrick as such cashier having authority thereby to cause and direct the payment thereof; that the said John H. Carter, being president as aforesaid, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction and management which he as such president aforesaid possessed over the moneys, fund, and credits of the said banking association, then and there pay and caused to be paid to the said John H. Carter, the Han-

over National Bank, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the said Hanover National Bank as aforesaid, and under the direction and control of the said John H. Carter as president of The American National Bank of Asheville the sum of six thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown cannot, therefore, be here given; that the said sum of six thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him the said John H. Carter and the said unknown persons to whom the said

was so paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as aforesaid, as well as on or about the 29th day of February, 1910, when said draft was paid, and caused to be paid, as aforesaid, the said John H. Carter then and there gave nothing of value therefor, that the repayment of the said sum of six thousand dollars to said banking association was

not then and there in any way secured, that he then and there
21 had no right to draw said money, funds, and credits from said banking association, that they the said unknown persons had no right to receive and convert the said sum to his and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors and committees, all of which the said John H. Carter then and there well knew;

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, six thousand dollars of the said money, funds, and credits of said banking association wrongfully and unlawfully and feloniously did, then and there, wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

6th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 29th day of March, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as the American

National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district
25 aforesaid under the laws of the United States; that he the said John H. Carter so then and thereon the day first above-mentioned being president as aforesaid did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power and control, direction, and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, draw and cause to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the Chase National Bank, New York City, its correspondent, a certain draft signed by R. M. Fitzpatrick, cashier, in printing and writing, dated on the 29th day of March, 1910, authorizing and directing the said the Chase National Bank to pay to the order of Hanover Natl. Bk., New York, the sum of five thousand dollars out of the moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing as aforesaid, he the said R. M. Fitzpatrick as such cashier having authority thereby to cause and direct the payment thereof; that the said John H. Carter being president as aforesaid, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction, and management which he as such president aforesaid possessed over the moneys, funds, and credits of the said
26 banking association, then and there pay and caused to be paid to the said John H. Carter, the Hanover National Bank, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the Chase National Bank as aforesaid, and under the direction and control of the said John H. Carter as president of the American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown cannot, therefore, be here given; that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted

to the individual use of him the said John M. Carter and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as aforesaid, as well as on the 31st day of March, 1910, when said draft was paid, and caused to be paid as aforesaid, the said John H. Carter then and there gave nothing of value therefor, that the repayment of the said sum of five thousand dollars to said banking association was not then and there in any way secured, that he then and there had no right to draw said money, funds, and credits from said banking association, that they the said unknown persons had no right to receive and convert the said sum to his and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors and committee, all of which the said John H. Carter then and there well knew.

27 And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, five thousand dollars of the said moneys, funds, and credits of said banking association wrongfully and unlawfully and feloniously did, then and there, wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

7th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 4th day of May, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by
virtue of the power and control, direction, and management
28 which he as president as aforesaid possessed over the moneys,

funds, and credits of the said banking association, draw and cause to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the Mutual Alliance Trust Co., New York City, its correspondent, a certain draft signed by John H. Carter, president, in printing and writing, dated on the 4th day of May, 1910, authorizing and directing the said Mutual Alliance Trust Co. to pay to the order of yourselves (Mutual Alliance Trust Co.) the sum of fifteen thousand dollars out of the moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing as aforesaid, he, the said John H. Carter, as such president having authority thereby to cause and direct the payment thereof; that the said John H. Carter being president as aforesaid, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors, and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction, and management which he as such president aforesaid possessed over the moneys, funds, and credits of the said banking association, then and there pay and caused to be paid to the said John H. Carter, The Mutual Alliance Trust Co., and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the Mutual Alliance Trust Co., as aforesaid, and under the direction and control of the said John H. Carter, as president of The American National Bank of Asheville, the sum of fifteen thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown, can not therefore be here given; that the said sum of fifteen thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him the said John H. Carter and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as aforesaid, as well as on the 6th day of May, 1910, when said draft was paid, and caused to be paid, as aforesaid, the said John H. Carter then and there gave nothing of value therefor; that the repayment of the said sum of fifteen thousand dollars to said banking association was not then and there in any way secured; that he then and there had no right to draw said money, funds, and credits from said banking association; that they the said unknown persons had no right to receive and convert the said sum to his and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid

with intent to injure and defraud said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors, and committees, all of which the said John H. Carter then and there well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent, and without the knowledge or consent aforesaid, fifteen thousand dollars of the said moneys, funds and credits of said banking association, wrongfully and unlawfully and feloniously did then and there wilfully misapply, contrary to the form of the statute
20 in such case made and provided, and against the peace and dignity of the United States.

8th count: The grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 28th day of May, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville, and in the district aforesaid, under the laws of the United States; that he, the said John H. Carter, so then and thereon the day first above mentioned being president, as aforesaid, did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president, as aforesaid, of said banking association, and by virtue of the power and control, direction, and management which he as president, as aforesaid, possessed over the moneys, funds, and credits of the said banking association, draw and cause to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the Hanover National Bank, New York City, its correspondent, a certain draft signed by John H. Carter, president, in printing and writing, dated on the 28th day of May, 1910, authorizing and directing the said Hanover National Bank to pay to the order of yourselves (Hanover National Bank) the sum of five thousand dollars out of the
31 moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing, as aforesaid, he, the said John H. Carter, as such president, having authority thereby to cause and direct the payment thereof; that the said John H. Carter, being president as aforesaid, on the day and year aforesaid,

at and in said district and within the jurisdiction of this court, did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president, as aforesaid, and by virtue of the power and control, direction, and management which he, as such president aforesaid, possessed over the moneys, funds, and credits of the said banking association, then and there pay and caused to be paid to the said John H. Carter, The Hanover National Bank, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the Hanover National Bank, as aforesaid, and under the direction and control of the said John H. Carter, as president of The American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown can not therefore be here given; that the said sum of five thousand dollars so paid and caused to be paid, as aforesaid, was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the same was so paid, as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was drawn and caused to be drawn, as aforesaid, as well as on or about the 31st day of May, 1910, when said draft was paid and caused to be paid, as aforesaid, the said John H. Carter then and there gave nothing of value therefor; that the repayment of the said sum of five thousand dollars to said banking association was not then and there in any way secured; that he then and there had no right to draw said money, funds, and credits from said banking association; that they, the said unknown persons, had no right to receive and convert the said sum to his and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid, as aforesaid, with intent to injure and defraud said banking association and divers persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, all of which the said John H. Carter then and there well knew.

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, five thousand dollars of the said moneys, funds and credits of the said banking association, wrongfully and unlawfully and feloniously did then and there wilfully misapply contrary to the form of the statute in such

case made and provided and against the peace and dignity of the United States.

9th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 2nd day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as the American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States: that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association, and by virtue of the power and control, direction, and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, draw and cause to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the Fourth Street National Bank, Philadelphia, Pa., its correspondent, a certain draft signed by R. M. Fitzpatrick, cashier, in printing and writing, dated on the 2nd day of June, 1910, authorizing and directing the said Fourth Street National Bank to pay to the order of Commercial and Farmers' National Bank, Baltimore, the sum of two thousand five hundred dollars out of the moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing as aforesaid, he, the said R. M. Fitzpatrick, as such cashier having authority thereby to cause and direct the payment thereof: that the said John H. Carter, being president as aforesaid on the day and year aforesaid, at and in said district and within the jurisdiction of this court, did wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction, and management which he as such president aforesaid possessed over the moneys, funds, and credits of the said banking association, then and there pay and caused to be paid to the said John H. Carter, the Commercial and Farmers' National Bank, and to certain persons to the grand jurors unknown,

upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the Fourth Street National Bank, of Philadelphia, Pa., as aforesaid, and under the direction and control of the said John H. Carter as president of the American National Bank of Asheville, the sum of two thousand five hundred dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown can not, therefore, be here given; that the said sum of two thousand five hundred dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the same was so paid as aforesaid and was thereby wholly lost to the said banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn as aforesaid, as well as on or about the 6th day of June, 1910, when said draft was paid, and caused to be paid, as aforesaid, the said John H. Carter then and there gave

nothing of value therefor, that the repayment of the said sum of two thousand five hundred dollars to said banking association was not then and there in any way secured, that he then and there had no right to draw said money, funds, and credits from said banking association, that they, the said unknown persons, had no right to receive and convert the said sum to his and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors and committees, all of which the said John H. Carter then and there well knew.

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, two thousand five hundred dollars of the said moneys, funds, and credits of said banking association wrongfully and unlawfully and feloniously did, then and there, wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

10th count: The grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 6th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate,

then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of

North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States: that he the said John H. Carter, so then and there on the day first above mentioned, being president as aforesaid, did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power and control, direction, and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, draw and cause to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the Hanover National Bank, New York City, its correspondent, a certain draft signed by R. M. Fitzpatrick, cashier, in printing and writing, dated on the 6th day of June, 1910, authorizing and directing the said Hanover National Bank to pay to the order of Hanover National Bank the sum of five thousand dollars out of the moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing as aforesaid, he the said R. M. Fitzpatrick as such cashier having authority thereby to cause and direct the payment thereof: that the said John H. Carter being president as aforesaid, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, did wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction, and management which he as such president aforesaid possessed over the moneys, funds, and credits of the said banking association, then and there pay and caused to be paid to the said John H. Carter, The Hanover National Bank, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the Hanover National Bank as aforesaid, and under the direction and control of the said John H. Carter as president of The American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credit of the said banking association so paid out being to the grand jurors unknown cannot, therefore, be here given: that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him the said John H. Carter and the said

unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as aforesaid, as well as on or about the 8th day of June, 1910, when said draft was paid, and caused to be paid, as aforesaid, the said John H. Carter then and there gave nothing of value therefor, that the repayment of the said sum of five thousand dollars to said banking association was not then and there in any way secured, that he then and there had no right to draw said money, funds, and credits from said banking association, that they the said unknown persons had no right to receive and convert the said sum to his and
 28 their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors and committees, all of which the said John H. Carter then and there well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, five thousand dollars of the said moneys, funds, and credits of said banking association wrongfully and unlawfully and feloniously did, then and there, willfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

11th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present: That on the 23rd day of June, 1910, and on other days, both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate then and there known and designated as the American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid, under the laws of the United States; that he the said John H. Carter so then and there on the day first above mentioned, being president
 29 as aforesaid, did then and there willfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power and control, direction and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, draw

and cause to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the National Exchange Bank, Baltimore, Md., its correspondent, a certain draft signed by John H. Carter, president, in printing and writing, dated on the 23rd day of June, 1910, authorizing and directing the said the National Exchange Bank to pay to the order of Atlantic Trust and Banking Co. the sum of five thousand dollars out of the moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing as aforesaid, he the said John H. Carter as such president having authority thereby to cause and direct the payment thereof; that he the said John H. Carter being president as aforesaid, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, did wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction, and management which he as such president aforesaid possessed over the moneys, funds, and credits of the said banking association, then and there pay and caused to be paid to the said John H. Carter, the Atlantic Trust and Banking Co., and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with the National Exchange Bank as aforesaid, and under the direction and control of the said John H. Carter as president of The American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown can not, therefore, be here given; that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there willfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him the said John H. Carter and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as aforesaid, as well as on or about the 25th day of June, 1910, when said draft was paid and caused to be paid, as aforesaid, the said John H. Carter then and there gave nothing of value therefor; that the repayment of the said sum of five thousand dollars to said banking association was not then and there in any way secured; that he then and there had no right to draw said money, funds, and credits from said banking association; that they the said unknown persons had no right to receive and convert the said sum to his and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid, as aforesaid, with intent to injure and defraud

said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors and committees, all of which the said

John H. Carter then and there well knew:

41 And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, five thousand dollars of the said moneys, funds, and credits of said banking association wrongfully, and unlawfully, and feloniously did, then and there, wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

12th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 27th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States: that he, the said John H. Carter, so then and there on the day first above mentioned, being president as aforesaid, did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association,

42 its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association, and by virtue of the power and control, direction, and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, draw and cause to be drawn upon the moneys, funds, and credits of the said banking association on deposit in the Hanover National Bank, New York City, its correspondent, a certain draft signed by John H. Carter, president, in printing and writing, dated on the 27th day of June, 1910, authorizing and directing the said Hanover National Bank to pay to the order of yourselves (Hanover National Bank) the sum of five thousand dollars out of the moneys, funds, and credits belonging to the said American National Bank of Asheville on deposit and existing as aforesaid, he, the said John H. Carter, as such president having authority thereby to cause and direct the payment thereof: that the said John H. Carter being president as aforesaid, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, did wrongfully, wilfully, unlawfully, and feloniously,

and with intent to injure and defraud said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power and control, direction and management, which he as such president aforesaid possessed over the moneys, funds, and credits of the said banking association, then and there pay and caused to be paid to the said John H. Carter, The Hanover National Bank, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the moneys, funds, and credits then and there belonging to and the property of the said banking association on deposit with The Hanover National Bank

as aforesaid, and under the direction and control of the said John H. Carter, as president of The American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown can not, therefore, be here given; that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as aforesaid, as well as on or about the 29th day of June, 1910, when said draft was paid, and caused to be paid, as aforesaid, the said John H. Carter then and there gave nothing of value therefor; that the repayment of the said sum of five thousand dollars to said banking association was not then and there in any way secured; that he then and there had no right to draw said money, funds, and credits from said banking association; that they the said unknown persons had no right to receive and convert the said sum to his and their own use and benefit; that the said draft was drawn and caused to be drawn, and was paid and caused to be paid, as aforesaid, with intent to injure and defraud said banking association and divers persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors, and committees, all of which the said John H. Carter then and there well knew:

And so, the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, five
44 thousand dollars of the said moneys, funds, and credits of said banking association wrongfully, and unlawfully, and feloniously, did, then and there, wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

13th count: The grand jurors for the United States of America, within and for the western district of North Carolina, upon their oath present:

That on the 10th day of December, 1909, and on other days both before and since that date, at and in said district, and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville, and in the district aforesaid, under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid, did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president, as aforesaid, of said banking association and by virtue of the power of control, direction, and management which he, as president as aforesaid, possessed over the moneys, funds, and credits of the said banking association, pay and caused to be paid out of the moneys, funds, and credits of the said banking association to the lumber underwriters and to certain
15 persons to the jurors unknown the sum of nine hundred and ninety dollars upon and by direction of a certain draft signed by P. J. Christopher, cashier of the Florida Home Insurance Co., dated November 25, 1909, on The American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of the lumber underwriters the sum of nine hundred and ninety dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown, can not therefore be here given; that the said sum of nine hundred and ninety dollars so paid and caused to be paid, as aforesaid, was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the use and benefit of the said lumber underwriters and the said Florida Home Insurance Co. and certain other persons to the grand jurors unknown to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid and caused to be paid, as aforesaid, as well as on the 25th day of November, 1909, when said draft was drawn and caused to be drawn, as aforesaid, the said Florida Home Insurance Co. nor the said lumber underwriters, nor either of them, had then and there no moneys, funds, and credits on deposit with said banking association; that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever; that the repayment of the

said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co. nor the said lumber underwriters, had no right to draw any moneys, funds, and credits from the said banking association; that they nor either of them, nor said unknown persons, had no right to receive and convert said sum to their own use and benefit; that the said draft was drawn and caused to be drawn, and was paid and caused to be paid, as
46 aforesaid, with intent to injure and defraud said banking association and divers other persons to the grand jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, all of which he, the said John H. Carter, well knew.

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, nine hundred and ninety dollars of the said moneys, funds, and credits of said banking association, wrongfully, unlawfully, and feloniously, did then and there wilfully misapply, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

11th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 11th day of December, 1909, and on other days, both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned, being president as

aforesaid, did then and there wilfully, wrongfully, unlawfully,
47 and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association, and by virtue of the power of control, direction, and management which he, as president as aforesaid, possessed over the moneys, funds, and credits of the said banking association, pay and caused to be paid out of the moneys, funds, and credits of the said banking association to Southern Paint Mfg. Co. and to certain persons to the jurors unknown, the sum of eight hundred and fifty dollars, upon and by direction of a certain draft signed by P. J. Christopher, cashier of the Florida Home Insurance Co., dated December 6, 1909,

on The American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of Southern Paint Mfg. Co. the sum of eight hundred and fifty dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown, can not, therefore, be here given; that the said sum of eight hundred and fifty dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the use and benefit of the said Southern Paint Mfg. Co., the said Florida Home Insurance Co., and certain other persons to the grand jurors unknown, to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid and caused to be paid as aforesaid, as well as on the 6th day of December, 1909, when said draft was drawn and caused to be drawn as aforesaid, the said Florida Home Insurance Co., nor the said 48 Southern Paint Mfg. Co., nor either of them, had then and there no moneys, funds, and credits on deposit with said banking association; that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever; that the repayment of the said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co., nor the said Southern Paint Mfg. Co., had no right to draw any moneys, funds, and credits from the said banking association; that they, nor either of them, nor said unknown persons, had no right to receive and convert said sum to their own use and benefit; that the said draft was drawn, and caused to be drawn, and was paid and caused to be paid as aforesaid, with intent to injure and defraud said banking association and divers other persons to the grand jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees; all of which he, the said John H. Carter, well knew.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid eight hundred and fifty dollars of the said moneys, funds, and credits of said banking association wrongfully, unlawfully, and feloniously did, then and there, wilfully misapply, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

15th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

49 That on the 16th day of December, 1909, and *and* on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking

association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid did, then and there, wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power of control, direction, and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, pay and caused to be paid out of the moneys, funds, and credits of the said banking association to J. T. Parkinson and Mrs. A. L. Weeks, mortgagee, and to certain persons to the jurors unknown, the sum of eight hundred eighty-five 5 100 dollars, upon and by direction of a certain draft signed by P. J. Christopher, cashier of the Florida Home Insurance Co., dated December 5, 1909, on The American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of J. T. Parkinson and Mrs.

A. L. Weeks, mortgagee, the sum of eight hundred eighty-five 50 5 100 dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown cannot therefore be here given; that the said sum of eight hundred eighty-five and 5 100 dollars so paid and caused to be paid as aforesaid was, then and there, wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the use and benefit of the said J. T. Parkinson and Mrs. A. L. Weeks, mortgagee, and the said Florida Home Insurance Co., and certain other persons to the grand jurors unknown to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid, and caused to be paid, as aforesaid, as well as on the 6th day of December, 1909, when said draft was drawn, and caused to be drawn, as aforesaid, the said Florida Home Insurance Co., nor the said J. T. Parkinson and Mrs. A. L. Weeks, mortgagee, nor either of them, had then and there no moneys, funds, and credits on deposit with said banking association; that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever; that the repayment of the said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co., nor the said J. T. Parkinson and Mrs. A. L. Weeks, mortgagee, had no right to draw any moneys, funds, and credits from the said banking association;

that they, nor either of them, nor said unknown persons, had no right to receive and convert said sum to their own use and benefit: that the said draft was drawn, and caused to be drawn, and was paid, and caused to be paid, as aforesaid, with intent to injure and defraud said banking association and divers other persons to the grand jurors unknown, and without the knowledge and consent of the said banking association, its board of directors, and committees, all of which he, the said John H. Carter, well knew.

51 And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid eight hundred eighty-five and 5/100 dollars of the said moneys, funds, and credits of said banking association wrongfully, unlawfully, and feloniously did, then and there, wilfully misapply, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

16th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present: That on the 3rd day of January, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States: that he the said John H. Carter so then and there on the day first above mentioned being president as aforesaid did, then and there, wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as

52 aforesaid of said banking association and by virtue of the power of control, direction, and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, pay and caused to be paid out of the moneys, funds, and credits of the said banking association to Mrs. B. A. Fowler and to certain persons to the jurors unknown, the sum of four hundred dollars, upon and by direction of a certain draft signed by P. J. Christopher, cashier of the Florida Home Insurance Co., dated December 13, 1909, on The American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of Mrs. B. A. Fowler the sum of four hundred dollars, a more particular description of the moneys, funds, and

credits of the said banking association so paid out being to the grand jurors unknown cannot, therefore, be here given; that the said sum of four hundred dollars so paid and caused to be paid as aforesaid was, then and there, wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the use and benefit of the said Mrs. B. A. Fowler, and the said Florida Home Insurance Co., and certain other persons to the grand jurors unknown to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid, and caused to be paid, as aforesaid, as well as on the 13th day of December, 1909, when said draft was drawn, and caused to be drawn, as aforesaid, the said Florida Home Insurance Co., nor the said Mrs. B. A. Fowler nor either of them, had then and there no moneys, funds, and credits on deposit with said banking association, that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever, that the repayment of the said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co., nor the said Mrs. B. A. Fowler, had no right to draw any moneys, funds, and credits from the said banking association; that they, nor either of them, nor said unknown persons, had no right to receive and convert said sum to their own use and benefit; that the said draft was drawn, and caused to be drawn, and was paid, and caused to be paid, as aforesaid, with intent to injure and defraud said banking association and divers other persons to the grand jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committee, all of which he the said John H. Carter well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say that he, the said John H. Carter, as aforesaid, in the manner and from, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid, four hundred dollars of the said moneys, funds, and credits of said banking association wrongfully, unlawfully and feloniously did, then and there, wilfully mis-apply, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

17th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 17th day of January, 1910, and on other days, both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing

and doing a banking business at the city of Asheville and in the district aforesaid, under the laws of the United States: that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid did, then and there, wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power of control, direction and management which he, as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, pay and caused to be paid out of the moneys, funds, and credits of the said banking association to J. R. Brown and J. J. Underwood, mortgagee, and to certain persons to the jurors unknown, the sum of two thousand one hundred and sixty-three and 3/100 dollars, upon and by direction of a certain draft signed by P. J. Christopher, cashier of the Florida Home Insurance Co., dated January 5, 1910, on The American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of J. R. Brown and J. J. Underwood, mortgagee, the sum of two thousand one hundred and sixty-three and 3/100 dollars, a more particular description of the moneys, funds and credits of the said banking association so paid out being to the grand jurors unknown, can not, therefore, be here given; that the said sum of two thousand one hundred sixty-three and 3/100 dollars so paid and caused to be paid as aforesaid was, then and there, wilfully, wrongfully, unlawfully, and
55 feloniously appropriated and converted to the use and benefit of the said J. R. Brown and J. J. Underwood, mortgagee, and the said Florida Home Insurance Co., and certain other persons to the grand jurors unknown, to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid, and caused to be paid, as aforesaid, as well as on the 5th day of January, 1910, when said draft was drawn, and caused to be drawn, as aforesaid, the said Florida Home Insurance Co., nor the said J. R. Brown and J. J. Underwood, mortgagee, nor either of them, had then and there no moneys, funds, and credits on deposit with said banking association, that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever; that the repayment of the said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co., nor the said J. R. Brown and J. J. Underwood, mortgagee, had no right to draw any moneys, funds, and credits from the said banking association, that they, nor either of them, nor said unknown persons, had no right to receive and convert said sum of their own use and benefit; that the said draft was drawn, and caused to be drawn, and was paid, and caused to be paid, as aforesaid, with intent to injure and defraud

said banking association and divers other persons to the grand jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, all of which he, the said John H. Carter, well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid two thousand
one hundred sixty-three and 3/100 dollars of the said moneys,
56 funds, and credits of said banking association wrongfully, unlawfully, and feloniously did, then and there, wilfully mis-apply, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

18th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 9th day of March, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking organization had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he the said John H. Carter so then and there on the day first above mentioned being president as aforesaid did, then and there, wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power of control, direction, and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, pay and cause to be paid out of the moneys, funds, and credits of the said banking association to H. P.

57 Metzler and T. A. Hightower, mortgagee, and to certain persons to the jurors unknown, the sum of eight hundred and fifty dollars, upon and by direction of a certain draft signed by P. J. Christopher, cashier of the Florida Home Insurance Co., dated February 25, 1910, on the American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of H. P. Metzler and T. A. Hightower, mortgagee, the sum of eight hundred and fifty dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown cannot, therefore, be here given; that the said sum of eight hundred and fifty dollars so

paid and caused to be paid as aforesaid was, then and there, wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the use and benefit of the said H. P. Metzler and T. A. Hightower, mortgagee, and the Florida Home Insurance Co. and certain other persons to the grand jurors unknown to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid, and caused to be paid, as aforesaid, as well as on the 25th day of February, 1910, when said draft was drawn, and caused to be drawn, as aforesaid, the said Florida Home Insurance Co., nor the said H. P. Metzler and T. A. Hightower, mortgagee, nor either of them, had then and there no moneys, funds, and credits on deposit with said banking association; that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever; that the repayment of the said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co., nor the said H. P. Metzler and T. A. Hightower, mortgagee, had no right to draw any moneys, funds, and credits from the said banking association; that they, nor either of them, nor said unknown persons, had no right to receive and convert said sum of their own use and benefit; that the said draft was drawn, and caused to be drawn, and was paid, and

caused to be paid, as aforesaid, with intent to injure and defraud said banking association and divers other persons to the grand jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, all of which he the said John H. Carter well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter as aforesaid, in the manner and form and by means and for the use and benefit and with the intent and without the knowledge or consent aforesaid eight hundred and fifty dollars of the said moneys, funds, and credits of said banking association wrongfully, unlawfully, and feloniously did then and there wilfully misapply, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

19th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 3rd day of May, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on

the day first above mentioned, being president as aforesaid, did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power of control, direction, and management which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association pay and caused to be paid out of the moneys, funds, and credits of the said banking association to Buell Cook, attorney, and G. D. Nealey, D. H. Morris, and H. E. Thomas, and to certain persons to the jurors unknown, the sum of eight hundred dollars upon and by direction of a certain draft signed by John J. McKay, manager of the Florida Home Insurance Co., dated March 31, 1910, on The American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of Buell Cook, attorney, and G. D. Nealey, D. H. Morris, and H. E. Thomas the sum of eight hundred dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown cannot, therefore, be here given; that the said sum of eight hundred dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the use and benefit of the said Buell Cook, attorney, and G. D. Nealey, D. H. Morris, and H. E. Thomas, the Florida Home Insurance Co., and certain other persons to the grand jurors unknown, to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid, and caused to be paid, as aforesaid, as well as on the 31st day of March, 1910, when said draft was drawn and caused to be drawn as aforesaid, the said Florida Home Insurance Co., nor the said Buell Cook, attorney, and G. D. Nealey, D. H. Morris, and H. E. Thomas, nor either of them had then and there no moneys, funds, and credits on deposit with said banking association; that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever; that the repayment of the said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co., nor the said Buell Cook, attorney, and G. D. Nealey, D. H. Morris, and H. E. Thomas had no right to draw any moneys, funds, and credits from the said banking association; that they, nor either of them, nor said unknown persons, had no right to receive and convert said sum of their own use and benefit; that the said draft was drawn, and caused to be drawn, and was paid, and caused to be paid, as aforesaid, with intent to injure and defraud said banking association and divers other persons to the grand jurors unknown, and without the knowledge and

consent of the said banking association, its board of directors, and committees, all of which he, the said John H. Carter, well knew.

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid eight hundred dollars of the said moneys, funds, and credits of said banking association wrongfully, unlawfully, and feloniously did then and there wilfully misapply, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

61 20th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 4th day of April, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid did, then and there, wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by virtue of the power of control, direction, and management, which he, as president as aforesaid, possessed over the moneys, funds, and credits of the said banking association, pay and caused to be paid out of the moneys, funds, and credits of the said banking association to H. C. Robinson, and to certain persons to the jurors unknown, the sum of nine hundred, twelve and 71 100 dollars, upon and by direction of a certain draft signed by John J. McKay, manager of the Florida Home Insurance Co., dated April 1, 1910, on The American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of H. C. Robin-

62 son the sum of nine hundred, twelve and 71 100 dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown cannot therefore be here given: that the said sum of nine hundred, twelve and 71 100 dollars so paid and caused to be paid as aforesaid was then and there, wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the use and benefit of the said H. C. Robinson, the Florida Home Insurance Co., and cer-

tain other persons to the grand jurors unknown, to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid, and caused to be paid, as aforesaid, as well as on the 1st day of April, 1910, when said draft was drawn, and caused to be drawn, as aforesaid, the said Florida Home Insurance Co., nor the said H. C. Robinson, nor either of them, had then and there no moneys, funds, and credits on deposit with said banking association; that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever; that the repayment of the said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co., nor the said H. C. Robinson, had no right to draw any moneys, funds, and credits from the said banking association; that they, nor either of them, nor said unknown persons, had no right to receive and convert said sum of their own use and benefit; that the said draft was drawn, and caused to be drawn, and was paid, and caused to be paid, as aforesaid, with intent to injure and defraud said banking association and divers other persons to the grand jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, all of which he, the said John H. Carter, well knew.

63 And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the intent and without the knowledge or consent aforesaid nine hundred twelve and 71/100 dollars of the said moneys, funds, and credits of said banking association wrongfully, unlawfully, and feloniously did, then and there, wilfully misapply, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

21st count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 17th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he the said John H. Carter so then and there on the day first above mentioned being president as aforesaid did then and there wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board

of directors and committees, and by virtue of his official relations as president as aforesaid of said banking association and by
64 virtue of the power of control, direction, and management

which he as president as aforesaid possessed over the moneys, funds, and credits of the said banking association, pay and caused to be paid out of the moneys, funds, and credits of the said banking association to D. C. Enochs, trustee of the bankrupt estate of F. E. Shivers and to certain persons to the jurors unknown, the sum of four hundred fifty-nine and 25 100 dollars, upon and by direction of a certain draft signed by John J. McKay, manager of the Florida Home Insurance Co., dated April 25, 1910, on The American National Bank of Asheville, authorizing and directing the said American National Bank to pay to the order of D. C. Enochs, trustee of the bankrupt estate of F. E. Shivers the sum of four hundred fifty-nine and 25 100 dollars, a more particular description of the moneys, funds, and credits of the said banking association so paid out being to the grand jurors unknown, cannot, therefore, be here given, that the said sum of four hundred fifty-nine and 25 100 dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the use and benefit of the said D. C. Enochs, trustee of the bankrupt estate of F. E. Shivers, the Florida Home Insurance Co., and certain other persons to the grand jurors unknown to whom the same was paid as aforesaid, and was thereby wholly lost to the said banking association; that on the day and year aforesaid, when said draft was paid, and caused to be paid, as aforesaid, as well as on the 25th day of April, 1910, when said draft was drawn, and caused to be drawn, as aforesaid, the said Florida Home Insurance Co., nor the said D. C. Enochs, trustee of the bankrupt estate of F. E. Shivers, nor either of them, had then and there no moneys, funds, and credits on deposit with said banking association; that there was not then and there due and owing to them, nor either of them, from said banking association any moneys, funds, and credits whatever, that the
65 repayment of the said sum to the said banking association was not in any way secured; that they, the said Florida Home Insurance Co., nor the said D. C. Enochs, trustee of the bankrupt estate of F. E. Shivers, had no right to draw any moneys, funds, and credits from the said banking association; that they, nor either of them, nor said unknown persons, had no right to receive and convert said sum of their of their own use and benefit; that the said draft was drawn, and caused to be drawn, and was paid and caused to be paid, as aforesaid, with intent to injure and defraud said banking association and divers other persons to the grand jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, all of which he, the said John H. Carter, well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say: That he, the said John H. Carter, as aforesaid, in the manner and form, and by means, and for the use and benefit, and with the

intent and without the knowledge or consent aforesaid four hundred fifty-nine and 25/100 dollars of the said moneys, funds, and credits of said banking association wrongfully, unlawfully, and feloniously did, then and there, wilfully misapply, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

22nd count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present: That on the 5th day of January, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then
66 existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he the said John H. Carter so then and there on the day first above mentioned being president as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, an account and record in the general ledger of said bank of the total amount and foreign drafts and collections sent out for collection due to and held by said bank, in a certain book, to wit, in the general ledger in the account headed "Foreign drafts" did then and there at the city of Asheville and county of Buncombe, on the 5th day of January, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association and agents appointed to examine the affairs of the said association, make and cause to be made a certain false entry in said foreign-drafts account in the column headed "Total debit" the figures "48,404.63" for the purpose of and thereby making the said foreign-drafts account to show that the said banking association had sent out for collection foreign drafts and collections due the said association amounting to \$48,404.63, whereas in truth and in fact the said banking association did not send out for collection foreign drafts and collections amounting to \$48,404.63, but foreign drafts and collections amounting to a much less sum, to wit, only \$33,415.00, he the said John H. Carter well knowing the same and well knowing the said entry to be false, as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity
of the United States.

67 23rd count: The grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 31st day of January, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville, and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, the amount of profits made and received by said banking association on said day in a certain book, to wit, in the general ledger in an account kept therein headed "Profit a/c" did then and there at the city of Asheville and county of Buncombe, on the 31st day of January, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed to examine the affairs of the said association, make and cause to be made a certain false entry in said general ledger in the profit account kept therein, to wit, "31 A. & E. T. Ry. bonds 3 000," for the purpose of and thereby making the said profit account to show that the said banking association had on the said day made and received a profit of three thousand dollars by the acquisition of

68 Asheville and East Tennessee Railway bonds, whereas in truth and in fact the said banking association had not made and received on the day aforesaid, or on any other day, a profit of three thousand dollars by the acquisition of bonds of the said Asheville and East Tennessee Railway bonds as indicated by said entry, nor any other sum by the acquisition of said bonds as indicated by said entry, nor had said banking association acquired any such bonds, he, the said John H. Carter well knowing the same and well knowing the said entry to be false as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

24th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 31st day of January, 1910, and on other days both before and since that date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North

Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid, under the laws of the United States; that he, the said John H. Carter, so then and there, on the day first above mentioned, being president as aforesaid and being then and there, by virtue of his said employment, required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, the amount of stocks

and bonds acquired and held by the said banking association on the said day, in a certain book, to wit, in the general ledger in

an account kept therein headed "Ather bonds, stocks, etc.," did then and there, at the city of Asheville and county of Buncombe, on the 31st day of January, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association and agents appointed to examine the affairs of the said association, make and cause to be made a certain false entry in said general ledger in the "Other bonds, stocks, etc.," account kept therein, to wit: "31 Asheville & E. Tenn. R. Bonds, 3 000," for the purpose of and thereby making the said "Other bonds, stocks, etc.," account to show that the said banking association had on the said day acquired and held bonds of the Asheville and East Tennessee Railway Co. to the amount of three thousand dollars, whereas in truth and in fact the said banking association had not on said day, or any other day, acquired nor held bond of the Asheville and East Tennessee Railway Co. to the amount of three thousand dollars, nor any other amount; he, the said John H. Carter, well knowing the same and well knowing the said entry to be false as aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

2d count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 23rd day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there

president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there, on the day first above mentioned, being president as aforesaid, and being then and there, by virtue of his said employment, required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, of notes and bills purchased and discounted by said banking

association, in a certain book, to wit, in the discount register, did then and there, at the city of Asheville and county of Buncombe, on the 23rd day of June, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of said banking association and agents appointed to examine the affairs of the said association, made and cause to be made certain false entries in said discount register, on the double pages on which were entered a transcript of notes and bills purchased and discounted on the said 23rd day of June, 1900, in the columns headed, respectively, "Maker or Payer", "When Due", "Amount"—"Elk Mt. Cotton Mill Co."—"Int on PD notes to July 1, 1910"—"D"—"2 786.52", respectively, for the purpose of and thereby making the said discount register to show that the said banking association had on the 23rd day of June, 1910, obtained a note for \$2,786.52 from the Elk Mountain Cotton Mill Co., thereby causing and intending the said discount register to show that the said Elk Mountain Cotton Mill Co. was then and there indebted to the said banking association in the sum of two thousand seven hundred eighty-six

71 dollars and fifty-two cents, when in truth and in fact the said Elk Mountain Cotton Mills Co. did not execute to the said banking association its note on the said date for the sum of two thousand seven hundred and eighty-six dollars and fifty-two cents, nor any other sum, nor did the said banking association hold or discount any such note; he, the said John H. Carter, well knowing the same and well knowing the said entry to be false as aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

26th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 23rd day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he the said John H. Carter so then and there on the day first above mentioned being president as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, the amount of interest and discount received and collected by said banking association on said date in a certain book,

to wit, in the general ledger in the account headed "Interest & discount," did then and there at the city of Asheville and county
72 of Buncombe, on the 23rd day of June, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed to examine the affairs of the said association, made and cause to be made a certain false entry in said general ledger in the "Interest & discount" account, to wit: "Int Past due notes Elk Mt C. Mills to 7/1/10 2 786 52" for the purpose of and thereby making the said "Interest & discount" account to show that there had been received by said banking association from the Elk Mountain Cotton Mills Co. interest on its past due notes amounting to the sum of \$2,786.52, when in truth and in fact the said banking association had not received said sum of \$2,786.52 nor any other sum, as interest from the said Elk Mountain Cotton Mills Co., he the said John H. Carter then and there well knowing the same and well knowing the said entry to be false as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

27th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 24th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and
73 doing a banking business, at the city of Asheville and in the district aforesaid under the laws of the United States; that he the said John H. Carter so then and there on the day first above mentioned being president as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, entries of items held in suspense for future adjustment and settlement in a certain book, to wit, in the general ledger in the account headed "Suspense," did then and there at the city of Asheville and county of Buncombe, on the 24th day of June, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed to examine the affairs of the said association, make and cause to be made a certain

false entry in said general ledger and in said account, to wit: "24 J. H. C. for Balto. dft. 6 23 5 000" said entry purporting to and did indicate and declare that said suspense account was properly chargeable with the sum of five thousand dollars whereas in truth and in fact the said suspense account was not properly chargeable with said sum of five thousand dollars, nor any other sum, as indicated by said entry, he the said John H. Carter well knowing the same and well knowing the said entry to be false as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

28th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 25th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, of entries of items held in suspense for future adjustment and settlement in a certain book, to wit, in the general ledger in the account headed "Suspense," did then and there, at the city of Asheville and county of Buncombe, on the 25th day of June, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed to examine the affairs of the said association, made and cause to be made a certain false entry in said general ledger and in said account, to wit: "Hawover" =4128 Andrews 2 000," the figures 2 000 being entered in the column headed "total credit," said entry purporting to and did indicate and declare that said suspense account was properly creditable with the sum of two thousand dollars, whereas in truth and in fact the said suspense account was not properly creditable with said sum of two thousand dollars, nor any other sum, as indicated by said entry, he, the said John H. Carter, well knowing the same and well knowing the said entry to be false, as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

75 29th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 25th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville, and in the district aforesaid, under the laws of the United States: that he, the said John H. Carter, so then and there on the day first above mentioned being president, as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, entries of items held in suspense for future adjustment and settlement, in a certain book, to wit, in the general ledger in the account headed "Suspense," did then and there, at the city of Asheville and county of Buncombe, on the 25th day of June, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association and agents appointed to examine the affairs of the said association, made and cause to be made a certain false entry in said general ledger and in said account, to wit: " " " 29 Bk Mfy 3 000", the figures 3000 being entered in the column headed "Total credit," said entry pur-

76 porting to, and did indicate and declare that said suspense account was properly creditable with the sum of three thousand dollars, whereas in truth and in fact the said suspense account was not properly creditable with said sum of three thousand dollars, nor any other sum, as indicated by said entry, he, the said John H. Carter, well knowing the same and well knowing the said entry to be false, as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

30th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present: That on the 25th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as the American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established and was then existing and

doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he the said John H. Carter so then and there on the day first above mentioned being president as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, entries of items held in suspense for future adjustment and settlement in a certain book, to wit, in the general ledger in the account headed "Suspense," did then and there at the city of Asheville and county of Buncombe, on the 25th day of June, 1910, at

and in said district and within the jurisdiction of this court, 77 wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed to examine the affairs of the said association, made and cause to be made a certain false entry in said general ledger and in said account, to wit, "Liberty dft = 21118 Gboro L. & Tr 10 000," the figures 10 000 being entered in the column headed "Total credit," said entry purporting to and did indicate and declare that said suspense account was properly creditable with the sum of ten thousand dollars, whereas in truth and in fact the said suspense account was not properly creditable with said sum of ten thousand dollars, nor any other sum, as indicated by said entry, he the said John H. Carter well knowing the same and well knowing the said entry to be false, as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

31st count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 30th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter,

so then and there, on the day first above mentioned, being president as aforesaid, and being then and there by virtue of his 78 said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, entries relating to notes executed by said banking association for moneys borrowed from other banking institutions, in a certain book, to wit, in the general ledger in the account headed "Bills payable," did then and there, at the city of Asheville and county of Buncombe, on the 30th day of June, 1910, at and in said

district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed to examine the affairs of the said association, make and cause to be made certain false entries in said general ledger and in said account, to wit:

" 30	Part paym't	10 000--"
"	"	5 000--"
"	"	15 000--"

the figures 10000, 5000, and 15000, respectively, being entered in the column headed "Total debit," said entry purporting to and did indicate and declare that the said bills payable account was properly chargeable with the said sum of ten thousand, five thousand, and fifteen thousand dollars, respectively, whereas in truth and in fact the said bills payable account was not properly chargeable with said sums of ten thousand, five thousand, and fifteen thousand dollars, respectively, nor any other sums, as indicated by said entries, he, the said John H. Carter, well knowing the same, and well knowing the said entries to be false as aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

32 count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 30th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there, on the day first above mentioned, being president as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, entries relating to the withdrawal of funds and credits on deposit by said banking association with the Liberty National Bank, New York City, in a certain book, to wit, in the general ledger in the account headed "Liberty Nat. Bk N Y" did then and there at the city of Asheville and county of Buncombe, on the 30th day of June, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the

jurors unknown, and to deceive the directors of the said banking association, and agents appointed to examine the affairs of the said association, make and cause to be made a certain false entry in
80 said general ledger and in said account, to wit: "Payment on loan 10 000-," the figures ten thousand being entered in the column headed "Total credit," said entry purporting to and did indicate and declare that there had been paid to the said Liberty National Bank by said banking association the sum of ten thousand dollars as a payment on a loan previously negotiated by said banking association from the said Liberty National Bank, whereas in truth and in fact there had not been paid as aforesaid the sum of ten thousand dollars, nor any other sum, to the said Liberty National Bank as a payment on a loan due by said banking association to the said Liberty National Bank, he, the said John H. Carter, well knowing the same and well knowing the said entry to be false as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

33rd count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 30th day of June, 1910, and on other days, both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there, on the day first above mentioned, being president as aforesaid and being then and there by virtue of his said employment
81 required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, entries relating to the withdrawal of funds and credits on deposit by said banking association with the Mutual Alliance Trust Co., New York City, in a certain book, to wit, in the general ledger in the account headed "Mutual Alliance Trust Co., N. Y.," did then and there at the city of Asheville and county of Buncombe, on the 30th day of June, 1910, at and in said district and within the jurisdiction of this court wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown and to deceive the directors of the said banking association and agents appointed to examine the affairs of the said association, make and cause to be made a certain false entry in said general ledger and in said account, to wit, "Part payment on loan 5 000-," the figures "5 000" being entered in the column headed "Total credit," said entry purporting to and did indicate and declare that there had been paid to

the said Mutual Alliance Trust Co. by said banking association the sum of five thousand dollars as a part payment on a loan previously negotiated by said banking association from the said Mutual Alliance Trust Co., whereas in truth and in fact there had not been paid as aforesaid the sum of five thousand dollars, nor any other sum, to the said Mutual Alliance Trust Co. as a part payment on a loan due by said banking association to the said Mutual Alliance Trust Co., he, the said John H. Carter, well knowing the same, and well knowing the said entry to be false as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

82 34th count: The grand jurors for the United States of America within and for the Western District of North Carolina, upon their oath present:

That on the 30th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, John H. Carter, late of said district, was then and there president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, State of North Carolina, which said banking association had been theretofore created, organized, and established, and was then existing and doing a banking business at the city of Asheville and in the district aforesaid under the laws of the United States; that he, the said John H. Carter, so then and there on the day first above mentioned being president as aforesaid, and being then and there by virtue of his said employment required to make and cause to be made certain entries of the transactions and dealings of the said banking association, to wit, entries relating to the withdrawal of funds and credits on deposit by said banking association with the Hanover National Bank, New York City, in a certain book, to wit, in the general ledger in the account headed "Hanover Nat Bk N Y," did then and there at the city of Asheville and county of Buncombe, on the 30th day of June, 1910, at and in said district and within the jurisdiction of this court, wrongfully, wilfully, unlawfully, and feloniously, and with intent to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed to examine the affairs of the said association, make and cause to be made a certain false entry in said general ledger and in said account, to wit:

83 "Payment on loan 15 000," the figures "15 000" being entered in the column headed "Total credit," said entry purporting to and did indicate and declare that there had been paid to the said Hanover National Bank by said banking association the sum of fifteen thousand dollars as a part payment on a loan previously negotiated by said banking association from the said Hanover National Bank, whereas in truth and in fact there had not been paid as aforesaid the sum of fifteen thousand dollars, nor any other sum, to the said Hanover National Bank as a payment on a loan due by said

banking association to the said Hanover National Bank, he, the said John H. Carter, well knowing the same, and well knowing the said entry to be false, as aforesaid, contrary to the form of the statute, in such case made and provided, and against the peace and dignity of the United States.

35th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of February, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 8th day of February, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier and attested by the signature
84 of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 31st day of January, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of February, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of Resources, which said entry was then and there in the words and figures following, that is to say:

Under the head "Resources," item 8, bonds, securities, etc., including premium on same (see schedule) 39 200 00," and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that said banking association held among its assets and resources bonds, securities, etc., including premium on same, to the amount of thirty-nine thousand two hundred dollars at the close of business of said association on the said 31st day of January, 1910.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this that the aggregate of bonds, securities, etc., including premium on same, held and owned by said association at the close of business of the said association on the said 31st day of January, 1910, was many thousand dollars less than the said sum of thirty-

85 nine thousand two hundred dollars, to wit: Thirty-six thousand two hundred dollars, as he, the said John H. Carter, then and there well knew.

That said false entry was then and there made, as aforesaid, with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association and other companies, bodies politic and corporate and individual persons, then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

36th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of February, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid under the laws of the United States:

86 That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of February, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 31st day of January, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on the 8th day of February, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president, and a director of said banking association did then and there make and cause to be made in said report a certain entry, under the head of resources which said entry was then and there in the words and figures following, that is to say:

Under the head "Resources" Item 12 Due from State and Private Banks and Bankers, Trust Companies, and Savings Banks—76 322 14", and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that there was due said banking association from State and private banks and bankers, trust companies, and savings banks, at the close of business of said association on the 31st day of January, 1910, seventy-six thousand, three hundred and twenty-two dollars and fourteen cents:

And the jurors aforesaid, upon the oaths aforesaid, do further present that the said entry so made as aforesaid was then
87 and there false in this that the aggregate amount due from State and private banks and bankers, trust companies and savings banks was many thousands of dollars less than the said sum of seventy-six thousand, three hundred and twenty-two dollars and fourteen cents, to-wit, fifty-one thousand, three hundred and thirty-two dollars and fifty-one cents, as he the said John H. Carter then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him the said John H. Carter to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons, then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

37th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

88 That on the 8th day of February, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency, said association on the 8th day of February, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by

the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 31st day of January, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on the said 8th day of February, 1910, John H. Carter, late of said district, at the city of Asheville, and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president and a director of said banking association did then and there make and cause to be made in said report a certain entry, under the head of "Loans exceeding the limit," which said entry was then and there in the words and figures following, that is to say, "none," and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that there were no loans exceeding the limit held and owned by said association at the close of
89 business of said association on the said 31st day of January, 1910.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said entry, so made as aforesaid, was then and there false in this that the said banking association at the close of business on the said 31st day of January, 1910, did hold and own loans exceeding the limit extended to the Florida Home Insurance Co. in the aggregate amount of thirty-seven thousand five hundred dollars, as he, the said John H. Carter, then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association and other companies, bodies politic, and corporate and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

90 38th count: The grand jurors for the United States of America within and for the Western District of North Carolina, upon their oath, present:

That on the 8th day of February, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Bun-

combe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of February, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and *and* under appropriate heads the resources and liabilities of said association at the close of business of said association on the 31st day of January, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of February, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of "Liabilities of officers and directors," which said entry was then and there in the words and figures following, that is to say: "Under the head of Names of officers and directors and official title—" John H. Carter President"—and opposite the name of John H. Carter, President, under the heading of "Liability (individual or *or* firm) as payers, "None"—and under the heading "Checks and Cash Items" and opposite the name of John H. Carter, President, "None," and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that the liability (individual or firm as payers) of the said John H. Carter was none, and that the liability of the said John H. Carter for checks and cash items was none.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this that the liability of John H. Carter as individual payer was five thousand dollars, and that the liability of the said John H. Carter for checks and cash items amounted to thirty-three thousand seven hundred dollars, as he the said John H. Carter then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him the said John H. Carter to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies

politic and corporate and individual persons, then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry

in the said report of the said banking association to the said
92 Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

39th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 9th day of April, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 9th day of April, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 29th day of March, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copies herein.

That on the said 9th day of April, 1910, John H. Carter, late of said district, at the city of Asheville, county of Buncombe, in said district, was president of said association; and the said

93 John H. Carter being president and a director of the said banking association did then and there make and cause to be made in said report a certain entry, under the head of Resources, which said entry was then and there in the words and figures following, that is to say: "Item 1 Loans and Discounts (see schedule) 1 272 870 53," and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that said banking association held among its resources, loans, and discounts in the aggregate amount of \$1,272,870.53 at the close of business of said association on the said 29th day of March, 1910.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there

false in this that the aggregate of the loans and discounts held and owned by said association at the close of business of said association on the said 29th day of March, 1910, was many thousands of dollars more than said sum of one million two hundred and seventy-two thousand eight hundred and seventy dollars and fifty-three cents, to wit, one million three hundred and sixty-nine thousand eight hundred and seventy dollars and fifty-three cents, as he the said John H. Carter then and there well knew:

That the said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons, then doing or who might thereafter do business with said association:

94 And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

40th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 9th day of April, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 9th day of April, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities

95 of said association at the close of business of said association on the 29th day of March, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on the said 9th day of April, 1910, John H. Carter, late of said district, at the city of Asheville, county of Buncombe, in said

district, was president of said association, and the said John H. Carter being president and a director of the said banking association did then and there make and cause to be made in said report a certain entry, under the head of "Resources," which said entry was then and there in the words and figures following; that is to say, "Item 8 Bonds, Securities, etc., including premium on same (see schedule) 46 200 00," and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that said banking association held among its assets and resources bonds, securities, etc., including premium on same to the amount of forty-six thousand two hundred dollars at the close of business of said association on the said 29th day of March, 1910:

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this that the aggregate of bonds, securities, etc., including premium on same, held and owned by said association at the close of business of said association on the said 29th day of March, 1910, was many thousands of dollars less than the said sum of forty-six thousand two hundred dollars, to wit, forty-three thousand two hundred dollars, as he, the said John H. Carter, then and there well knew:

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, 96 and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons, then doing or who might thereafter do business with said association:

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

1st count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 9th day of April, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 29th day of April, 1910, at the city of Asheville and county of

97 Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 29th day of March, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on the said 9th day of April, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of the said banking association, did then and there make and cause to be made in said report a certain entry under the head of "Resources" which said entry was then and there in the words and figures following, that is to say: "Item 11 Due from National Banks (not approved Reserve Agents) 85 255 14", and which said entry so as aforesaid made in said report then and there purported to show, and did in substance and effect indicate and declare, that there was due said banking association from national banks (not approved reserve agents) the sum of eighty-five thousand two hundred and fifty-five dollars and fourteen cents at the close of business of said association on the said 29th day of March, 1910.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the amount due from national banks (not approved reserve agents) to said banking association at the close of business on the said 29th day of March, 1910, was many thousands of
98 dollars less than said sum of eighty-five thousand two hundred and fifty-five dollars and fourteen cents, to wit, eighty thousand one hundred and ninety-three dollars and forty-four cents, as he, the said John H. Carter, then and there well knew; that said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association and other companies, bodies politic and corporate and individual persons, then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

42 count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 9th day of April, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and
99 then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 9th day of April, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 29th day of March, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 9th day of April, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of the said banking association, did then and there make and cause to be made in said report a certain entry under the head of liabilities, which said entry was then and there in the words and figures following, that is to say: "Item 19 Notes and Bills rediscounted 128,247 38," and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that the liability of said banking association at the close of business on the said 29th day
100 of March, 1910, for notes and bills rediscounted by it aggregated the sum of one-hundred and twenty-eight thousand, two hundred and forty-seven dollars and thirty-eight cents:

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this that the aggregate liability of said association at the close of business of said association on said 29th day of March, 1910, for notes and bills rediscounted by it was many thousands of dollars more than said sum of one hundred and twenty-eight thousand two hundred and forty-seven dollars and forty-eight cents, to wit, one hundred and sixty thousand seven hundred and thirty-six dollars and eight cents, as he, the said John H. Carter, then and there well knew; that the said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be

thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate and individual persons, then doing or who might thereafter do business with said association:

And so, the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

101 43d count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 9th day of April, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 9th day of April, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 29th day of March, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 9th day of April, 1910, John H. Carter, late of said district, at the city of Asheville, and county of Buncombe, in said district was president of said association, and the said John H. Carter being president, and a director of the said banking association,

did then and there make and cause to be made in said report a
102 certain entry, under the head of liabilities, which said entry was then and there in the words and figures following, that is to say: "Item 20 Bills Payable, including Certificates of Deposits representing money borrowed 170 000 00", and which said entry so as aforesaid made in said report, then and there purported to show, and did in substance and effect indicate and declare that the liability of said banking association at the close of business of said association on the said 29th day of March, 1910, on account of its outstanding bills payable, including certificates of deposit representing money bor-

owed, aggregated the sum of one hundred and seventy thousand dollars;

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this that the aggregate liability of said association at the close of business of said association on said 29th day of March, 1910, on account of its outstanding bills payable, including certificates of deposit representing money borrowed, was many thousands of dollars more than said sum of one hundred and seventy thousand dollars, to wit, two hundred and seventy thousand dollars; as he the said John H. Carter then and there well knew;

That said false entry was then and there made as aforesaid with the intent then and there on the part of him the said John H. Carter to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate and individual persons, then doing or who might thereafter do business with said association;

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and 103 year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

44th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 9th day of April, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 9th day of April, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 29th day of March, 1910, it being the day specified by the said Comptroller

of the Currency in his said request and requisition. Said
104 report is here shown to the court, but is of too great length to
be copied herein.

That on said 9th day of April, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of loans exceeding the limit, which said entry was then and there in the words and figures following, that is to say, "None," and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that there were no loans exceeding the limit held and owned by said association at the close of business of said association on the said 29th day of March, 1910.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said entry, so made as aforesaid, was then and there false in this that the said banking association at the close of business on the said 29th day of March, 1910, did hold and own loans exceeding the limit extended to the following companies and corporations: Ludden & Bates Southern Music House, aggregating fifty-two thousand five hundred dollars; Florida Home Insurance Co., aggregating forty-five thousand five hundred dollars; North Georgia Trust Co., aggregating fifty-one thousand eighteen dollars and sixty-five cents, as he, the said John H. Carter, then and there well knew; that said false entry was then and there made, as aforesaid, with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to
105 examine the affairs of said association and other companies,
bodies politic and corporate and individual persons, then doing
or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district, and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

45th count: The grand jurors for the United States of America, within and for the western district of North Carolina, upon their oath present:

That on the 9th day of April, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States,

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 9th day of April, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 29th day of March, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on the said 9th day of April, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of liability of officers and directors, which said entry was then and there, in the words and figures following, that is to say: Under the head of "Names of Officers and Directors and Official Title"—"John H. Carter, President"—and opposite the name of John H. Carter, President, under the head of "Liability (individual or firm) as payers, "none"—and under the heading "Checks and Cash Items" and opposite the name of John H. Carter, president, no entry, and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that the liability (individual or firm) as payers of the said John H. Carter was none, and that the liability of the said John H. Carter for checks and cash items was none.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the liability of John H. Carter (individual or firm), as payers was thirty-five thousand one hundred and fifty dollars, and that the liability of the said John H. Carter for checks and cash items amounted to twenty-six thousand dollars, as he, the said John H. Carter, then and there well knew; that said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed, or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate and individual persons, then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully,

and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

46th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor
108 from the Comptroller of the Currency said association, on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on the said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president and a director of said banking association did then and there make and cause to be made in said report a certain entry, under the head of resources, which said entry was then and there in the words and figures following, that is to say: "Item 8 Bonds, Securities, etc., including premium on same (see schedule) 27 200 00", and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that said banking association held among its assets and resources bonds, securities, etc., including premium on same, to the amount of twenty-seven thousand two hundred dollars at the close of business of said association on the 30th day of June, 1910.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this that the aggregate of bonds, securities, etc.,
109 including premium on same, held and owned by said association at the close of business of said association on the said 30th day of June, 1910, was many thousands of dollars less than the

said sum of twenty-seven thousand two hundred dollars, to wit, twenty-four thousand two hundred dollars, as he the said John H. Carter then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him the said John H. Carter to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

47th count. The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a
110 body corporate theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on the said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of resources, which said entry was then and there in the words and figures following, that is to say: "Item 12 Due from

State and Private Banks and Bakers, Trust Companies, and Savings Banks 114 176 83", and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that there was due said banking association from State and private banks, trust companies, and savings banks at the close of business of said association on the said 30th day of June, 1910, one hundred and fourteen thousand one hundred and seventy-six dollars and eighty-three cents.

111 And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid, was then and there false in this that the aggregate amount due from State and private banks and bankers, trust companies, and savings banks at the close of business of said banking association on the said 30th day of June, 1910, was many thousands of dollars less than the said sum of one hundred and fourteen thousand one hundred and seventy-six dollars and eighty-three cents, to wit, sixty thousand nine hundred and forty-four dollars and ninety-one cents, as he, the said John H. Carter, then and there well knew; that the said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons, then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

112 48th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oaths present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a cer-

tain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein:

That on the said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H.

113 Carter being president and a director of said banking association, did then and there make and cause to be made in said

report a certain entry, under the head of Resources, which said entry was then and there in the words and figures following; that is to say: "Item 13 Due from approved Reserve Agents (see schedule) 46 236 92," and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that there was due said banking association from approved reserve agents at the close of business on the said 30th day of June, 1910, forty-six thousand two hundred and thirty-six dollars and ninety-two cents.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the aggregate amount due from approved reserve agents at the close of business of said association at the close of business on the said 30th day of June, 1910, was many thousands of dollars less than the said sum of forty-six thousand two hundred and thirty-six dollars and ninety-two cents, to wit, forty-two thousand, five hundred and ninety dollars and forty-seven cents, as he, the said John H. Carter, then and there well knew:

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic, and corporate and individual persons, then doing or who might thereafter do business with said association:

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid,

114 at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully,

wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

49th count: The grand jurors for the United States of America within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States;

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

115 That on the said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry under the head of Resources, which said entry was then and there in the words and figures following, that is to say: "Item 14 Checks and other Cash Items (see schedule) 19 482 69", which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that said association at the close of business on the said 30th day of June, 1910, held among its resources checks and other cash items amounting to nineteen thousand, four hundred and eighty-two dollars and sixty-nine cents:

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the aggregate amount of checks and other cash items held and owned by said association at the close of business on the said 30th day of June, 1910, was many thousands of dollars more than the said sum of nineteen thousand four hundred and eighty-two dollars and sixty-nine cents, to wit, thirty-four thousand eight hundred and eighty-two dollars and sixty-nine cents, as he, the said John H. Carter, then and there well knew:

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to

examine the affairs of said association and other companies, bodies politic and corporate and individual persons, then doing or who might thereafter do business with said association:

116 And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

50th count: The grand jurors for the United States of America, within and for the western district of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail

and under appropriate heads the resources and liabilities of
117 said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe in said district, was president of said association, and the said John H. Carter being president, and a director of said banking association did then and there make and cause to be made in said report a certain entry, under the head of resources, which said entry was then and there in the words and figures following, that is to say: "Item 18 Lawful Money Reserve in Bank. Gold Certificates 19 000 00", which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that said association at the close of business on the said 30th day of June, 1910, held and owned gold certificates amounting to nineteen thousand dollars:

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this that the aggregate amount of gold certificates held and owned by said association at the close of business on the said 30th day of June, 1910, was many thousands of dollars less than said sum of nineteen thousand dollars, to wit, five thousand dollars, as he the said John H. Carter then and there well knew:

That said false entry was then and there made as aforesaid with the intent then and there on the part of him the said John H. Carter to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, 118 bodies politic, and corporate and individual persons, then doing or who might thereafter do business with said association:

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously, did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

51st count: The grand jurors for the United States of America, within and for the western district of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to 119 exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H.

Carter being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry under the head of Liabilities, which said entry was then and there in the words and figures following: that is to say: "Item 15 Cashier's Checks outstanding 11 088 82," which said entry so as aforesaid made purported to show and did in substance and effect indicate and declare that the liability of said association at the close of business on said 30th day of June, 1910, on account of cashier's checks issued by it and then outstanding, amounted to eleven thousand and eighty-eight dollars and eighty-two cents:

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so as aforesaid made was then and there false in this that the total liability of said association at the close of business on the said 30th day of June, 1910, on account of cashier's checks issued by it and then outstanding amounted to a much greater sum than said eleven thousand and eighty-eight dollars and eighty-two cents, to wit, twelve thousand nine hundred and sixty-eight dollars and sixty-six cents, as he, the said John H. Carter, then and there well knew:

120 That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons, then doing or who might thereafter do business with said association:

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

52 count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on on the 8th day of July, 1910, the American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

121 That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the

Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on the said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president and a director of said banking association did then and there make and cause to be made in said report a certain entry, under the head of liabilities, which said entry was then and there in the words and figures following, that is to say: "Item 20 Bills Payable, including Certificates of Deposit representing money borrowed 221 500 00", and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that the liability of said banking association at the close of business of said association on the said 30th day of June, 1910, on account of its outstanding bills payable, including certificates of deposit, representing money borrowed, aggregated the sum of two hundred and twenty-one thousand, five hundred dollars:

122 And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this that the aggregate liability of the association at the close of business of said association on said 30th day of June, 1910, on account of its outstanding bills payable, including certificates of deposit, representing money borrowed, was many thousands of dollars more than said sum of two hundred and twenty-one thousand five hundred dollars, to wit, two hundred and fifty-one thousand five hundred dollars, as he the said John H. Carter then and there well knew:

That said false entry was then and there made as aforesaid with the intent then and there on the part of him the said John H. Carter to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons, then doing or who might thereafter do business with said association:

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form

of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

123 53rd count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States;

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president, and a director of said banking association did then and there make and cause to be made in said report a certain entry, under the head of Loans Exceeding the Limit, which said entry was then and there in the words and figures following,

124 that is to say: "None," and which said entry so as aforesaid made in said report then and there purported to show, and did in substance and effect indicate and declare that there were no loans exceeding the limit held and owned by said association at the close of business of said association on the said 30th day of June, 1910.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry, so made as aforesaid, was then and there false in this, that the said banking association at the close of business on the said 30th day of June, 1910, did hold and own loans exceeding the limit extended to the following companies and corporations: Florida Home Insurance Co., aggregating \$62,500; North Georgia Trust Co., aggregating \$56,043.65; Ludden & Bates Southern Music House, aggregating \$85,000, as he, the said John H. Carter, then and there well knew; that said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other

companies, bodies politic and corporate, and individual persons, then doing or who might thereafter do business with said association:

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

125 54th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier and attested by the signature of three of the directors of said association, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of Liabilities of officers and direc-

126 tors, which said entry was then and there in the words and figures following, that is to say: Under the head of "Names of officers and directors and official title—"John H. Carter, President" and opposite the name of John H. Carter, President, under the head of "Liability (individual or firm) as payers, "None" 0— and under the heading "Checks and Cash Items" and opposite the name of John H. Carter, President, No entry, and which said entry so as aforesaid made in said report then and there purported to show, and did in substance and effect indicate and declare, that the liability

individual or firm) as payers of the said John H. Carter was none, and that the liability of the said John H. Carter for checks and cash items was none;

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there also in this, that the liability of the said John H. Carter as individual payer was thirty-five thousand one hundred and fifty dollars, and that the liability of the said John H. Carter for checks and cash items amounted to forty-two thousand dollars, as he, the said John H. Carter, then and there well knew;

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons, then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

(Signed) A. E. HOLTON,

U. S. Attorney.

(Indorsed:) United States *vs.* John H. Carter. No. 5441.
Indictment: Violation of sec. 5209, R. S. U. S. witnesses: (x) A. E. Radert, L. L. Jenkins, J. G. Merrimon, P. P. Brown. Those marked (x) sworn by foreman of and in the presence of the grand jury. (Signed) A. J. Gordon, foreman of grand jury. A true bill. (Signed) A. J. Gordon, foreman. U. S. District Court, Asheville, N. C. Filed Dec. 31, 1912. J. M. Millikan, clerk. (No. 1168.)

Indictment.

U. S. District Court, Asheville, N. C. Filed May 13, 1913. J. M. Millikan, clerk.

District Court of the United States, Western District of North Carolina, at Asheville. May term, 1913.

The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 26th day of May, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction

of this court, one John H. Carter was the president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, in the State of North Carolina, which said national banking association had been theretofore created, organized and established, and was then existing and doing business in the city of Asheville and county of Buncombe in the district aforesaid, under the laws of the United States. That he, the said John H. Carter so being president of said national banking association, as aforesaid, and by virtue of the official relation of said John H. Carter as president of said national banking association and by virtue of the power of control, direction, and management which said John H. Carter as such president of said national banking association possessed over the moneys, funds, and credits of said national banking association on the 26th day of May, 1910, then and there at the said city of Asheville and county of Buncombe and district aforesaid, did wilfully, wrongfully, unlawfully, feloniously and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown without the knowledge and consent of the said national banking association, its board of directors and committees, and for the use, benefit and advantage of the said John H. Carter, and other persons to the grand jurors aforesaid unknown, misapply certain of the moneys, funds, and credits of the said national banking association, to-wit, the sum of three thousand dollars, in the manner and by the means following: that is to say that he the said John H. Carter as president of said national banking association, did, on the said 25th day of May, 1910, wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the jurors aforesaid unknown and without the knowledge and consent of the said banking association, its board of directors and committees, then and there enter and cause to be entered upon the individual ledger of the said national banking association containing the account subject to check of the said John H. Carter with said bank a false and fictitious credit amounting to and in the sum of thirty-seven hundred, fifty-four and 40/100 dollars, thereby intending to and causing the individual account of the said John H. Carter with said national banking association to indicate that the said John H. Carter had then and there paid and deposited in the said American National Bank money and funds to the amount and value of thirty-seven hundred, fifty-four and 40/100 dollars, which said credit entry indicated and showed, at was intended by the said John H. Carter to indicate and show, that the said John H. Carter was entitled to withdraw therefrom of the moneys and funds of the said national banking association the sum of thirty-seven hundred, fifty-four and 40/100 dollars, when in truth and in fact the said John H. Carter neither paid nor deposited anything of value therefor, and that the said credit entry so made aforesaid was false and fictitious and did not entitle the said John

Carter to withdraw from said national banking association its moneys and funds to the said sum of thirty-seven hundred, fifty-four and 40/100 dollars, nor any other sum; that afterwards, to-wit, on the 24th day of May 1910, the said John H. Carter did then and there wilfully, wrongfully, unlawfully, feloniously and with intent to injure and defraud the said national banking association and divers other persons to the grand jurors aforesaid unknown, and without the knowledge and consent of the said banking association its board of directors and committees, transfer and cause to be transferred upon the books of the said national banking association and enter and cause to be entered upon the said books to the credit of the said North Georgia National Bank, of Blue Ridge, the sum of three thousand 131 and dollars of the moneys, funds and credits of the said American National Banking Association and caused the same to be charged to the account of the said John H. Carter by a memorandum charge ticket, thereby causing the sum of three thousand dollars of the moneys, and funds of the said national banking association to be transferred to the credit of the said North Georgia National Bank upon the books of the said American National Bank and charged against the said account of the said John H. Carter so fictitiously created as aforesaid and which upon the books of the said bank appeared to be due the said John H. Carter when in truth and in fact the said John H. Carter had no moneys, funds, and credits in the said bank, nor any amounts due him from said bank on deposit to be charged therewith nor to be applied thereon, whereby the said American National Bank became indebted to and under obligations to pay the said North Georgia National Bank the said sum of three thousand dollars and authorized the said North Georgia National Bank to withdraw from the moneys, funds, and credits of the said American National Bank the said sum of three thousand dollars, which said sum of three thousand dollars was thereafter withdrawn from the said American National Bank and appropriated to the individual use and benefit of the said John H. Carter and the said North Georgia National Bank and other persons to the jurors unknown, without the said American National Bank having received anything of value therefor, whereby the funds of the American National Bank were depleted and wilfully misapplied to the amount of three thousand dollars and the amount of said three thousand dollars wholly lost to the said national banking association:

And so the grand jurors aforesaid, upon their oath aforesaid, do say that to-wit, the said John H. Carter, as such president of said national banking association as aforesaid, in manner and form and by the means and for the use and benefit and with the intent and without the knowledge and consent aforesaid, three thousand dollars of the moneys, funds, and credits of said national banking association unlawfully and feloniously did then and there wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

132 2nd count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 28th day of May, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, one John H. Carter was the president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, in the State of North Carolina, which said national banking association had been theretofore created, organized, and established and was then existing and doing business in the city of Asheville and count' of Buncombe, in the district aforesaid, under the laws of the United States; that he, the said John H. Carter, so being president of said national banking association as aforesaid and by virtue of the official relation of the said John H. Carter as president of said national banking association and by virtue of the power of control, direction, and management which said John H. Carter as such president of the said national banking association possessed over the moneys, funds, and credits of said national banking association, on the 28th day of May, 1910, then and there, at the said city of Asheville and county of Buncombe and district aforesaid, did wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, without the knowledge and consent of the said national banking association, its board of directors and committees, and for the use, benefit, and advantage of the said John H. Carter and other persons to the grand jurors aforesaid unknown, misapply certain of the moneys, funds, and credits of the said national banking association, to wit, the sum of three thousand dollars, in the manner and by the means following; that is to say that he, the said John H. Carter, as president as aforesaid of said national banking association, did, on the said 26th day of May, 1910, wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the jurors aforesaid unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, then and there enter and cause to be entered upon the individual ledger of the said national banking association containing the account subject to check of the said John H. Carter with said bank a false and fictitious credit amounting to and in the sum of thirty-two hundred forty-five and 60/100 dollars, thereby intending to and causing the individual account of the said John H. Carter with said national banking association to indicate that the said John H. Carter had then and there paid and deposited in the said American National Bank money and funds to the amount and value of thirty-two hundred forty-five and 60/100 dollars, which said credit entry indicated and showed, and was intended by the said John H. Carter to indicate and show, that the said John H. Carter was entitled to withdraw therefrom of

the moneys and funds of the said national banking association the sum of thirty-two hundred forty-five and 60/100 dollars, when in truth and in fact the said John H. Carter neither paid nor deposited anything of value therefor, and that the said credit entry so made as aforesaid was false and fictitious and did not entitle the said John H. Carter to withdraw from said national banking association its moneys and funds to the said sum of thirty-two hundred forty-five and 60/100 dollars, nor any other sum; that afterwards, to wit, on the 28th day of May, 1910, the said John H. Carter did then and there wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud the said national banking association and divers other persons to the grand jurors aforesaid unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, transfer and cause to be transferred upon the books of the said national banking association and enter and cause to be entered upon the said books to the credit of the said North

Georgia National Bank, of Blue Ridge, the sum of three thousand 134 sand dollars of the moneys, funds, and credits of the said

American national banking association and caused the same to be charged to the account of the said John H. Carter by a memorandum charge ticket, thereby causing the sum of three thousand dollars of the moneys and funds of the said national banking association to be transferred to the credit of the said North Georgia National Bank upon the books of the said American National Bank and charged against the said account of the said John H. Carter so fictitiously created as aforesaid and which upon the books of the said bank appeared to be due the said John H. Carter, when in truth and in fact the said John H. Carter had no moneys, funds, and credits in the said bank, nor any amounts due him from said bank on deposit to be charged therewith nor to be applied thereon, whereby the said American National Bank became indebted to and under obligations to pay the said North Georgia National Bank the said sum of three thousand dollars and authorized the *the* said North Georgia National Bank to withdraw from the moneys, funds, and credits of the said American National Bank the said sum of three thousand dollars, which said sum of three thousand dollars was thereafter withdrawn from the said American National Bank and appropriated to the individual use and benefit of the said John H. Carter and the said North Georgia National Bank and other persons to the jurors unknown without the said American National Bank having received anything of value therefor, whereby the funds of the American National Bank were depleted and wilfully misapplied to the amount of three thousand dollars and the amount of said three thousand dollars wholly lost to the said national banking association:

And so the grand jurors aforesaid, upon their oath aforesaid, do say that he, the said John H. Carter, as such president of said national banking association as aforesaid, in manner and form, and by the means, and for the use and benefit, and with the intent and without the knowledge and consent aforesaid, three thousand dollars

of the moneys, funds, and credits of said national banking association, unlawfully and feloniously did then and there wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

135 3rd count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 28th day of May, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, one John H. Carter was the president of a certain national banking association, a body corporate then and there known and designated as the American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, in the State of North Carolina, which said national banking association had been theretofore created, organized, and established, and was then existing and doing business in the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States. That he, the said John H. Carter, so being president of said national banking association, as aforesaid, and by virtue of the official relation of said John H. Carter as president of said national banking association and by virtue of the power of control, direction, and management which said John H. Carter as such president of said national banking association possessed over the moneys, funds, and credits of said national banking association on the said 28th day of May, 1910, then and there at the said city of Asheville and county of Buncombe and district aforesaid, did wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons, to the grand jurors aforesaid unknown, without the knowledge and consent of the said national banking association, its board of directors and committees, and for the use, benefit, and advantage of the said John H. Carter and other persons to the grand jurors aforesaid unknown, misapply certain of the moneys, funds, and credits of the said national banking association, to wit, the sum of five thousand dollars, in the manner and by the means following, that is to say, that he, the said John H. Carter, as president as aforesaid of said national banking
 136 association, did, on the 28th day of May, 1910, wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, then and there draw and cause to be drawn upon certain moneys, funds, and credits belonging to and the property of the said national banking association on deposit in the Hanover National Bank of New York City, its correspondent, a certain draft signed by John H. Carter, president, in printing and writing, dated on the 28th day of May, 1910, authorizing and directing the said Hanover National Bank to pay to the order of yourselves (Hanover National Bank) the sum of five thousand dollars, out of the said moneys, funds, and credits be-

longing to and deposited by the American National Bank of Asheville as aforesaid, he, the said John H. Carter, as such president having authority thereby to cause and direct the payment thereof; that afterwards, to wit, on or about the 31st day of May, 1910, the said John H. Carter, being president as aforesaid, did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said national banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power of control, direction, and management which he as such president aforesaid possessed over the said moneys, funds, and credits of the said national banking association, then and there pay and cause to be paid to the said Hanover National Bank, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the said moneys, funds, and credits then and there belonging to and the property of the said national banking association on deposit with the said Hanover National Bank as aforesaid, and under the direction and control of the said John H. Carter as president of the American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said national banking association so paid out being to the grand jurors unknown cannot therefore be here given; that the said sum of five thousand so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said national banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as well as on the day and year aforesaid when said draft was paid and caused to be paid as aforesaid, the said John H. Carter then and there gave nothing of value therefor; that the repayment of the said sum of five thousand dollars to said national banking association was not then and there in any way secured; that he then and there had no right to withdraw said money, funds, and credits from said national banking association; that the said Hanover National Bank and the said unknown persons had no right to receive and convert the said sum to it, his, and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said national banking association, its board of directors and committees, all of which the said John H. Carter then and there well knew;

And so the grand jurors aforesaid, upon their oath aforesaid, do say that he, the said John H. Carter, as such president of said national banking association as aforesaid, in manner and form, and by

the means, and for the use and benefit, and with the intent and without the knowledge and consent aforesaid, five thousand dollars of the said moneys, funds, and credits of said national banking association wrongfully, unlawfully, and feloniously did then and there wilfully misapply, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

138 4th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 2nd day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, one John H. Carter was the president of a certain national banking association, a body corporate, then and known and designated as the American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, in the State of North Carolina, which said national banking association had been theretofore created, organized, and established, and was then existing and doing business in the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States. That he, the said John H. Carter, so being president of said national banking association, as aforesaid, and by virtue of the official relation of said John H. Carter as president of said national banking association and by virtue of the power of control, direction, and management which said John H. Carter as such president of said national banking association possessed over the moneys, funds, and credits of said national banking association on the said 2nd day of June, 1910, then and there at the said city of Asheville and county of Buncombe and district aforesaid, did wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, without the knowledge and consent of the said national banking association, its board of directors and committees, and for the use, benefit and advantage of the said John H. Carter, and other persons to the grand jurors aforesaid unknown, misapply certain of the moneys, funds, and credits of the said national banking association, to wit, the sum of twenty-five hundred dollars, in the manner and by the means following, that is to say, that he, the said John H. Carter, as president as aforesaid of said national banking association, did, on the said 2nd day of June, 1910, wilfully, wrong-

139 fully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, then and there draw and cause to be drawn upon certain moneys, funds, and credits belonging to and the property of the said national banking association on deposit in the Fourth Street National Bank of Philadelphia, its correspondent, a certain draft signed by R. M. Fitzpatrick, cashier, in printing and writing, dated on the 2nd day of June, 1910, authorizing and directing the said Fourth Street National Bank to pay to the order of Counl. & Farmers N. Bank, Baltimore, the sum of twenty-five

hundred dollars, out of the said moneys, funds, and credits belonging to and deposited by the American National Bank of Asheville as aforesaid, he, the said R. M. Fitzpatrick, as such cashier having authority thereby to cause and direct the payment thereof; that afterwards, to wit, on or about the 6th day of June, 1910, the said John H. Carter, being president as aforesaid, did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said national banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power of control, direction, and management which he as such president aforesaid possessed over the said moneys, funds, and credits of the said national banking association, then and there pay and cause to be paid to the said Commercial and Farmers National Bank, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the said moneys, funds, and credits then and there belonging to and the property of the said national banking association on deposit with the Fourth Street National Bank of Philadelphia as aforesaid, and under the direction and control of the said John H. Carter as president of the American National Bank of Asheville, the sum of twenty-five hundred dollars, a more particular description of the moneys, funds, and credits of the said

140 national banking association so paid out being to the grand jurors unknown cannot therefore be here given; that the said sum of twenty-five hundred dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said national banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as well as on the day and year aforesaid when said draft was paid and caused to be paid as aforesaid, the said John H. Carter then and there gave nothing of value therefor, that the repayment of the said sum of twenty-five hundred dollars to said national banking association was not then and there in any way secured; that he then and there had no right to withdraw said money, funds, and credits from said national banking association; that the said Commercial and Farmers National Bank and the said unknown persons had no right to receive and convert the said sum to it, his, and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown, and without the knowledge and consent of the said national banking association, its board of directors and committees, all of which the said John H. Carter then and there well knew;

And so the grand jurors aforesaid, upon their oath aforesaid, do say that he, the said John H. Carter, as such president of said national banking association as aforesaid, in manner and form and by the means, and for the use and benefit, and with the intent, and without the knowledge and consent aforesaid, twenty-five hundred dollars of the said moneys, funds, and credits of said national banking association wrongfully, unlawfully, and feloniously did then and there wilfully misapply, contrary to the forms of the statute in such case made and provided and against the peace and dignity of the United States.

141 5th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 6th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, one John H. Carter was the president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, in the State of North Carolina, which said national banking association had been therefore created, organized, and established, and was then existing and doing business in the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States; that he, the said John H. Carter so being president of said national banking association, as aforesaid, and by virtue of the official relation of said John H. Carter as president of said national banking association and by virtue of the power of control, direction, and management which said John H. Carter as such president of said national banking association possessed over the moneys, funds, and credits of said national banking association on the said 6th day of June, 1910, then and there at the said city of Asheville and county of Buncombe and district aforesaid, did wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, without the knowledge and consent of the said national banking association, its board of directors and committees, and for the use, benefit, and advantage of the said John H. Carter and other persons to the grand jurors aforesaid unknown, misapply certain of the moneys, funds, and credits of the said national banking association, to wit, the sum of five thousand dollars, in the manner and by the means following, that is to say, that he the said John H. Carter, as president as aforesaid of said national banking association, did, on the said 6th day of June, 1910, wilfully, wrongfully, unlawfully, feloniously, and with

142 intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, then and there draw and cause to be drawn upon certain moneys, funds, and credits belonging to and the property of the said national banking association on deposit in the Hanover National Bank of New York City, its correspondent, a certain draft signed by

R. M. Fitzpatrick, cashier, in printing and writing, dated on the 6th day of June, 1910, authorizing and directing the said Hanover National Bank to pay to the order of Hanover National Bank the sum of five thousand dollars out of the said moneys, funds, and credits belonging to and deposited by the American National Bank of Asheville as aforesaid, he the said R. M. Fitzpatrick as such cashier having authority thereby to cause and direct the payment thereof; that afterwards, to wit, on or about the 8th day of June, 1910, the said John H. Carter being president as aforesaid did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said national banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors, and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power of control, direction, and management which he as such president aforesaid possessed over the said moneys, funds, and credits of the said national banking association, then and there pay and caused to be paid to the said Hanover National Bank, and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the said moneys, funds, and credits then and there belonging to and the property of the said national banking association on deposit with the Hanover National Bank as aforesaid, and under the direction and control of the said John H. Carter as president of the American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said national banking association so paid out being to the grand

143 jurors unknown cannot therefore be here given; that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him the said John H. Carter and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said national banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn as well as on the day and year aforesaid when said draft was paid and caused to be paid as aforesaid, the said John H. Carter then and there gave nothing of value therefor, that the repayment of the said sum of five thousand dollars to said national banking association was not then and there in any way secured; that he then and there had no right to withdraw said money, funds, and credits from said national banking association; that the said Hanover National Bank and the said unknown persons had no right to receive and convert the said sum to it, his, and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons, to the jurors unknown, and without the knowledge and consent of the said national banking association, its board of

directors, and committees, all of which the said John H. Carter then and there well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that he, the said John H. Carter, as such president of said national banking association as aforesaid, in manner and form, and by the means, and for the use and benefit, and with the intent and without the knowledge and consent aforesaid, five thousand dollars of the said moneys, funds, and credits of said national banking association wrongfully, unlawfully, and feloniously did then and there wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

144 6th count: The grand jurors of the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 23rd day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, one John H. Carter was the president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, in the State of North Carolina, which said national banking association has been theretofore created, organized, and established, and was then existing and doing business in the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States. That he, the said John H. Carter so being president of said national banking association, as aforesaid, and by virtue of the official relation of said John H. Carter as president of said national banking association and by virtue of the power of control, direction, and management which said John H. Carter as such president of said national banking association possessed over the moneys, funds, and credits of said national banking association on the said 23rd day of June, 1910, then and there at the said city of Asheville and county of Buncombe and district aforesaid, did wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, without the knowledge and consent of the said national banking association, its board of directors and committees, and for the use, benefit, and advantage of the said John H. Carter, and other persons to the grand jurors aforesaid unknown, misapply certain of the moneys, funds, and credits of the said national banking association, to wit, the sum of five thousand dollars, in the manner and by the means following, that is to say, that he, the said John H. Carter as president as aforesaid of said national banking association, did,

145 in the said 23rd day of June, 1910, wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, then and there draw and cause to be drawn upon certain moneys, funds, and credits belonging to and the prop-

erty of the said national banking association on deposit in the National Exchange Bank of Baltimore, its correspondent, a certain draft signed by John H. Carter, president, in printing and writing, dated on the 23rd day of June, 1910, authorizing and directing the said National Exchange Bank to pay to the order of Atlantic Trust & Banking Co. the sum of five thousand dollars, out of the said moneys, funds, and credits belonging to and deposited by the American National Bank of Asheville as aforesaid, he the said John H. Carter as such president having authority thereby to cause and direct the payment thereof; that afterwards, to wit, on or about the 25th day of June, 1910, the said John H. Carter being president as aforesaid did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said national banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power of control, direction, and management which he as such president aforesaid possessed over the said moneys, funds, and credits of the said national banking association, then and there pay and cause to be paid to the said Atlantic Trust & Banking Co., and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the said moneys, funds, and credits then and there belonging to and the property of the said national banking association on deposit with the said National Exchange Bank as aforesaid, and under the direction and control of the said John H. Carter as president of the American National Bank of Asheville, the sum of five thousand dollars, a more particular de-

146 scription of the moneys, funds, and credits of the said national banking association so paid out being to the grand jurors unknown cannot therefore be here given; that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said national banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn as well as on the day and year aforesaid when said draft was paid and caused to be paid as aforesaid, the said John H. Carter then and there gave nothing of value therefor; that the repayment of the said sum of five thousand dollars to said national banking association was not then and there in any way secured; that he then and there had no right to withdraw said money, funds, and credits from said national banking association; that the said Atlantic Trust and Banking Co. and the said unknown persons had no right to receive and convert the said sum to it, his, and their own use and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers

persons to the jurors unknown and without the knowledge and consent of the said national banking association, its board of directors and committees, all of which the said John H. Carter then and there well knew:

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that he, the said John H. Carter, as such president of said national banking association as aforesaid, in manner and form, and by the means, and for the use and benefit, and with the intent and without the knowledge and consent aforesaid, five thousand dollars of the said moneys, funds, and credits of said national banking association wrongfully, unlawfully, and feloniously did then and there wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

147 7th count: The grand jurors for the United States of America within and for the Western District of North Carolina, upon their oath present:

That on the 27th day of June, 1910, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, one John H. Carter was the president of a certain national banking association, a body corporate, then and there known and designated as The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, in the State of North Carolina, which said national banking association had been theretofore created, organized, and established, and was then existing and doing business in the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States. That he, the said John H. Carter, so being president of said national banking association, as aforesaid, and by virtue of the official relation of said John H. Carter as president of said national banking association and by virtue of the power of control, direction, and management which said John H. Carter as such president of said national banking association possessed over the moneys, funds, and credits of said national banking association on the said 27th day of June, 1910, then and there, at the said city of Asheville and county of Buncombe and district aforesaid, did wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and divers other persons to the grand jurors aforesaid unknown, without the knowledge and consent of the said national banking association, its board of directors, and committees, and for the use, benefit, and advantage of the said John H. Carter and other persons to the grand jurors aforesaid unknown, misapply certain of the moneys, funds, and credits of the said national banking association, to wit, the sum of five thousand dollars, in the manner and by the means following: that is to say, that he the said John H. Carter, as president as aforesaid of said national banking association, did, on the said 27th day of June, 1910,

148 wilfully, wrongfully, unlawfully, feloniously, and with intent to injure and defraud said national banking association and

divers other persons to the grand jurors aforesaid unknown, then and there draw and cause to be drawn upon certain moneys, funds, and credits belonging to and the property of the said national banking association on deposit in the Hanover National Bank, its correspondent, a certain draft signed by John H. Carter, president, in printing and writing, dated on the 27th day of June, 1910, authorizing and directing the said Hanover National Bank to pay to the order of yourselves (Hanover National Bank) the sum of five thousand dollars out of the said moneys, funds, and credits belonging to and deposited by the American National Bank of Asheville, as aforesaid, he, the said John H. Carter, as such president having authority thereby to cause and direct the payment thereof; that afterwards, to wit, on or about the 29th day of June, 1910, the said John H. Carter, being president as aforesaid, did wilfully, wrongfully, unlawfully, and feloniously, and with intent to injure and defraud said national banking association and divers other persons to the jurors unknown, and without the knowledge and consent of the said banking association, its board of directors, and committees, and by virtue of his official relation as such president as aforesaid, and by virtue of the power of control, direction, and management which he as such president aforesaid possessed over the said moneys, funds, and credits of said national banking association, then and there pay and cause to be paid to the said Hanover National Bank and to certain persons to the grand jurors unknown, upon and pursuant to the direction and authorization contained in said draft, from and out of the said moneys, funds, and credits then and there belonging to and the property of the said national banking association on deposit with the Hanover National Bank as aforesaid, and under the direction and control of the said John H. Carter as president of the American National Bank of Asheville, the sum of five thousand dollars, a more particular description of the moneys, funds, and credits of the said national banking association so paid out being to

the grand jurors unknown cannot therefore be here given;

149 that the said sum of five thousand dollars so paid and caused to be paid as aforesaid was then and there wilfully, wrongfully, unlawfully, and feloniously appropriated and converted to the individual use of him, the said John H. Carter, and the said unknown persons to whom the same was so paid as aforesaid, and was thereby wholly lost to the said national banking association; that on the day and year aforesaid when said draft was drawn and caused to be drawn, as well as on the day and year aforesaid when said draft was paid and caused to be paid as aforesaid, the said John H. Carter then and there gave nothing of value therefor; that the repayment of the said sum of five thousand dollars to said national banking association was not then and there in any way secured; that he then and there had no right to withdraw said money, funds, and credits from said national banking association; that the said Hanover National Bank and the said unknown persons had no right to receive and convert the said sum to it, his, or their own use

9
1

and benefit; that the said draft was drawn and caused to be drawn and was paid and caused to be paid as aforesaid with intent to injure and defraud said banking association and divers persons to the jurors unknown and without the knowledge and consent of the said national banking association, its board of directors, and committees, all of which the said John H. Carter then and there well knew;

And so the grand jurors aforesaid, upon their oath aforesaid, do say that he, the said John H. Carter, as such president of said national banking association as aforesaid, in manner and form, and by the means, and for the use and benefit, and with the intent, and without the knowledge and consent aforesaid five thousand dollars of the said moneys, funds, and credits of said national banking association wrongfully, unlawfully, and feloniously did then and there wilfully misapply, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

149½ 8th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 23rd day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as The American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business, and then and there designated and known as discount register a certain entry showing notes received and discounted on said date, which said entry was then and there in the words and figures following, that is to say, in the columns headed respectively, "Maker or Payer," "When due," "Amount"—"Elk Mt. Cotton Mill Co."—"Int on PD notes to July 1, 1910,"—"D"—"2 786.52," respectively, and which said entry so as aforesaid made in said book, then and there purported to show, and did, in substance and effect, indicate and declare, that the said national banking association had on the 23rd day of June, 1910, obtained and received a note from the Elk Mountain Cotton Mill Co. in the sum of \$2,786.52 in payment of interest on past due notes of the said Elk Mountain Cotton Mill Co. held by the said national banking association.

And the jurors aforesaid, on their oath aforesaid, do further present that the said entry so made as aforesaid was then and there

false in this, that a note in the sum of \$2,786.52 was not then and there received by said national banking association from the said Elk Mountain Cotton Mill Co. on account of interest then and there due and payable to said national banking association from the said Elk Mountain Cotton Mill Co., as he, the said John H. Carter, then and there well knew; and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with the intent then and there on the part of him the said John H. Carter to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

9th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 23rd day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as the American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business, and then and there designated and known as general ledger a certain entry to the credit of a certain account known as Interest & Discount, which said entry was then and there in the words and figures following, that is to say: "Int Past due notes Elk Mt. C. Mills to 7 1 10 2 786.52" and which said entry so as aforesaid made in said books, then and there purported to show, and did, in substance and effect, indicate and declare, that there had been received by said national banking association from the Elk Mountain Cotton Mill Co. interest on its past due notes amounting to the sum of \$2,786.52.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said sum of \$2,786.52 was not then and there received by said national banking association from the said Elk Mountain Cotton Co., and that the said sum of \$2,786.52 was not then and there received by said national banking association upon any account from any source, as he, the said John H. Carter, then and

there well knew: and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid, with the intent then and there on the part of him, the said John H. Carter, to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

10th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 24th day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as the American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting

its said banking business, and then and there designated and
152 known as general ledger, a certain entry to the debit of a certain account known as suspense, which said entry was then and there in the words and figures following, that is to say: "24 JHC for Balto dft 6 23 5000" and which said entry so as aforesaid made in said book then and there purported to show, and did, in substance and effect, indicate and declare, that the sum of five thousand dollars was properly chargeable to the said suspense account.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said suspense account was not then and there properly chargeable with said sum of five thousand dollars, nor in any other sum, as indicated by said entry, as he, the said John H. Carter, then and there well knew: and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with intent then and there on the part of him, the said John H. Carter, to injure and defraud the said banking association and divers other persons to the jurors unknown and to deceive the directors of the said banking association and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case and provision and against the peace and dignity of the United States.

11th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 25th day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as the American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of

153 Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business, and then and there designated and known as general ledger, a certain entry to the credit of a certain account known as suspense, which said entry was then and there in the words and figures following, that is to say: "Hanover \pm 4128 Andrews 2 000", and which said entry so as aforesaid made in said book, then and there purported to show, and did, in substance and effect, indicate and declare, that the sum of \$2,000 was properly creditable to the said suspense account on account of draft issued by the said national banking association on the Hanover National Bank of New York.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said suspense account was not then and there entitled to credit with the said sum of \$2,000, nor in any other sum, on account of a draft issued by the said national banking association on the Hanover National Bank of New York, as he, the said John H. Carter, then and there well knew; and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

12th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 25th day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking

association then and there known and designated as The American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured
154 by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business, and then and there designated and known as general ledger, a certain entry to the credit of a certain account known as suspense, which said entry was then and there in the words and figures following, that is to say: "29 Bk Mfy 3 000" and which said entry, so as aforesaid made in said book, then and there purported to show, and did in substance and effect indicate and declare that the sum of \$3,000 was properly creditable to the said suspense account on account of a draft issued by the said national banking association on the Hanover National Bank of New York.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said suspense account was not then and there entitled to a credit with the said sum of \$3,000, nor in any other sum, on account of a draft issued by the said national banking association on the Hanover National Bank of New York, as he, the said John H. Carter, then and there well knew; and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

155 13th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 25th day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as The American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, in the year of our Lord one thousand

eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business and then and there designated and known as general ledger, a certain entry to the credit of a certain account known as suspense, which said entry was then and there in the words and figures following, that is to say: "Liberty dft \$21118 Gboro L & Tr 10 000," and which said entry so as aforesaid made in said book then and there purported to show, and did in substance and effect indicate and declare, that the sum of \$10,000 was properly creditable to the said suspense account on account of a draft issued by the said national banking association on the Liberty National Bank of New York.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said suspense account was not then and there entitled to credit with the said sum of \$10,000, nor in any other sum, on account of a draft issued by the said national banking association on the Liberty National Bank of New York, as he, the said John H. Carter, then and there well knew, and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with the intent then and there on the part of him, the
 156 said John H. Carter, to injure and defraud the said banking association and divers other persons to the jurors unknown and to deceive the directors of the said banking association and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

11th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 20th day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as The American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business, and then and there designated and known as general ledger, a certain entry to the debit of a certain account known as

bills payable, which said entry was then and there in words and figures following, that is to say:

" 30	Part paym't	10 000- "
"	"	5 000- "
"	"	15 000- "

and which said entry so as aforesaid made in said book then and there purporting to show, and did in substance and effect indicate and declare, that there had been paid by the said national banking association on its bills payable then and there out-standing the sum of \$10,000, \$5,000, and \$15,000, respectively;

157 And the jurors aforesaid, on their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said sums of \$10,000, \$5,000, and \$15,000, respectively, were not then and there paid by the said national banking association on its bills payable then and there out-standing, as he, the said John H. Carter, then and there well knew; and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

15th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 30th day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as The American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business, and then and there designated and known as general ledger, a certain entry to the credit of a certain account known as Liberty Nat. Bk. N. Y., which said

158 entry was then and there in words and figures following, that is to say: "Payment on loan 10,000-" and which said entry, so as aforesaid made in said book, then and there purported

to show, and did, in substance and effect, indicate and declare that the sum of \$10,000 had been then and there paid to the Liberty National Bank of New York by said national banking association as a payment on a loan due and payable by the said national banking association to the said Liberty National Bank.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said sum of \$10,000, nor any other sum, was not then and there paid by said national banking association to the Liberty National Bank of New York as a payment on a loan due and payable by the said national banking association to the said Liberty National Bank, as he, the said John H. Carter, then and there well knew; and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association, and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

16th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That John H. Carter, late of said district, on the 30th day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as The American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in

the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business, and then and there designated and known as general ledger, a certain entry to the credit of a certain account known as Mutual Alliance Trust Co., N. Y., which said entry was then and there in the words and figures following, that is to say: "Part payment on loan 5 000-" and which said entry so as aforesaid made in said book, then and there purported to show, and did, in substance and effect, indicate and declare that the sum of \$5,000 had been then and there paid by the said national banking association to the Mutual Alliance Trust Co. of New York as a part payment on a loan due and payable by the said national banking association to the said Mutual Alliance Trust Co.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said sum of \$5,000, nor any other sum, was not then and there paid by said national banking association to the Mutual Alliance Trust Co. of New York as a part payment on a loan due and payable by the said national banking association to the said Mutual Alliance Trust Co., as he, the said John H. Carter, then and there well knew; and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

17th count: The grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That John H. Carter, late of said district, on the 30th day of June, in the year of our Lord one thousand nine hundred and ten, at said district, being then and there president of a certain national banking association then and there known and designated as the American National Bank of Asheville, which said association had been theretofore created and organized under and by virtue of an act 160 of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Asheville, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain book then and there belonging to and in use by the said association in transacting its said banking business, and then and there designated and known as general ledger, a certain entry to the credit of a certain account known as Hanover Nat. Bk. N. Y., which said entry was then and there in the words and figures following, that is to say: "Payment on loan 15 000-" and which said entry so as aforesaid made in said book then and there purported to show, and did, in substance and effect, indicate and declare that the sum of \$15,000 had been then and there paid by the said national banking association to the Hanover National Bank of New York as a payment on a loan due and payable by the said national banking association to the said Hanover National Bank.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said sum of \$15,000, nor any other sum, was not then and there paid by said national banking association to the Hanover National Bank of New York as a payment on a loan due and

payable by the said national banking association to the Hanover National Bank, as he, the said John H. Carter, then and there well knew; and that the said false entry was then and there unlawfully, wilfully, and feloniously made as aforesaid with intent then and there on the part of him the said John H. Carter to injure and defraud the said banking association and divers other persons to the jurors unknown, and to deceive the directors of the said banking association and agents appointed by the Comptroller of the Currency to examine the affairs of said banking association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

161 18th count: The grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition, said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president, and a director, of said banking association, did then and there make and cause to be made in said report a certain entry under the head of resources, which said entry was then and therein the words and figures following, that is to say: "Item 8 Bonds, Securities, etc., including premium on same (see schedule) 27 200 00", and which said entry so as aforesaid made in said report then and there purported to show, and did, in substance and effect, indicate and declare that the said national banking association
162 held among its assets and resources bonds, securities, etc., including premium on same, to the amount of twenty-seven thousand two hundred dollars, at the close of business of said national banking association on the 30th day of June, 1910;

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the aggregate amount of bonds, securities, etc., including premium on same, held and owned by said national banking association at the close of business on the said 30th day of June, 1910, was many thousands of dollars less than the said sum of twenty-seven thousand two hundred dollars, to-wit, twenty-four thousand two hundred dollars, as he the said John H. Carter then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

19th count: The grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and

State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier and attested by the signature of three of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry under the head of Resources, which said entry was then and there in the words and figures following: that is to say: "Item 12 Due from State and Private Banks and Bankers, Trust Companies, and Savings Banks 114176 83," and which said entry so as aforesaid made in said report then and there purported to show and did in substance and effect indicate and declare that there was due said national banking association from State and private banks and bankers, trust companies, and savings banks at the close of business on the said 30th day of June, 1910, one hundred and fourteen thousand one hundred and seventy-six dollars and eighty-three cents;

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and

there false in this, that the aggregate amount due from State
164 and private banks and bankers, trust companies, and savings banks at the close of business of said national banking association on the said 30th day of June, 1910, was many thousands of dollars less than the said sum of one hundred and fourteen thousand one hundred and seventy-six dollars and eighty-three cents, to wit, sixty thousand nine hundred and forty-four dollars and ninety-one cents, as he, the said John H. Carter, then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association and other companies, bodies politic and corporate, and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

20th count: The grand jurors for the United States of America within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of

Buncombe, in the district aforesaid, under the laws of the United States.

165 That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of Resources, which said entry was then and there in the words and figures following, that is to say: "Item 13, Due from Approved Reserve Agents (see schedule) 46 236 92," and which said entry so as aforesaid made in said report then and there purported to show, and did, in substance and effect indicate and declare that there was due said national banking association from approved reserve agents at the close of business on the said 30th day of June, 1910, forty-six thousand two hundred and thirty-six dollars and ninety-two cents:

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the aggregate amount due from approved reserve agents at the close of business of said national banking association on the said 30th day of June, 1910, was many thousands of dollars less than the said sum of forty-six thousand two hundred and thirty-six dollars and ninety-two cents, to wit, forty-two thousand 166 five hundred and ninety dollars and forty-seven cents, as he the said John H. Carter then and there well knew; that said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association and other companies, bodies politic and corporate and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully,

and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

21st count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, the American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier and attested by the signature of three

167 of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition. Said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president and a director of said banking association did then and there make and cause to be made in said report a certain entry, under the head of Resources, which said entry was then and there in the words and figures following, that is to say: "Item 14. Checks and other Cash Items (see schedule) 19 482 69", which said entry so as aforesaid made in said report then and there purported to show, and did, in substance and effect, indicate and declare that the said national banking association at the close of business on the said 30th day of June, 1910, held among its resources checks and other cash items amounting to \$19,482.69.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the aggregate amount of checks and other cash items held and owned by said national banking association at the close of business on the said 30th day of June, 1910, was many thousands of dollars more than the said sum of \$19,482.69, to wit, \$34,882.69, as he, the said John H. Carter, then and there well knew.

That the said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons
168 then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, so say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

22nd count: That grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition: said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of
169 said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter being president and a director of said banking association did then and there make and cause to be made in said report a certain entry, under the head of Resources, which said entry was then and there in the words and figures following, that is to say: "Item 18 Lawful Money Reserve in Bank, Gold Certificates 19,000 00", which said entry so as aforesaid made in said report then and there purported to show, and did, in substance and effect, indicate

and declare that the said national banking association at the close of business on the said 30th day of June, 1910, held and owned gold certificates amounting to nineteen thousand dollars.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the aggregate amount of gold certificates held and owned by said national banking association at the close of business on the said 30th day of June, 1910, was many thousand of dollars less than the said sum of nineteen thousand dollars, to-wit, five thousand dollars, as he the said John H. Carter then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him the said John H. Carter to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

170 23rd count: The grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate, theretofore duly organized and established, and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition; said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of Liabilities, which said entry was then and there in the words and figures following, that is to say: "Item 15, Cashier's Checks outstanding \$1088.82", which said entry so as aforesaid made in said report then and there purported to show, and did, in substance and effect, indicate and declare that the liability of said national banking association at the close of business on the said

30th day of June, 1910, on account of cashier's checks issued by 171 it and then and there outstanding amounted to the sum of

\$11,088.82. And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so as aforesaid made was then and there false in this, that the total liability of said national banking association at the close of business on the said 30th day of June, 1910, on account of cashier's checks issued by it and then and there outstanding amounted to a much greater sum than \$11,088.82, to-wit, \$12,968.62, as he the said John H. Carter then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association and other companies, bodies politic and corporate, and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid upon their oaths aforesaid do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

21st count: That grand jurors for the United States of America within and for the Western District of North Carolina upon their oath present:

That on the 8th day of July, 1910, the American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States.

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of Currency in his said request and requisition. Said report is here shown to the court, but it is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry under the head of liabilities, which said entry was then and there in the words and figures following, that is to say: "Item 20, Bills Payable, including Certificates of Deposit representing money borrowed \$221,500.00", and which said entry so as aforesaid made in said report then and there purported to show, and did in substance and effect indicate and declare, that the liability of said national banking association at the close of business on the said 30th day of June, 1910, on account of its outstanding bills payable, including certificates of deposit representing money borrowed, aggregated the sum of \$221,500.00.

And the jurors aforesaid upon their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the aggregate liability of the said national banking association at the close of business on the said 30th day of June, 1910, on account of its outstanding bills payable, including certificates of deposit representing money borrowed, was many thousands of dollars more than the said sum of \$221,500.00, to wit, \$251,500.00, as he, the said John H. Carter, then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic, and corporate and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully,

and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

25th count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe, and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States:

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association, on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads the resources and liabilities of said association at

174 the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition; said report is here shown to the court, but is of too great length to be copied herein.

That on said 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville, and county of Buncombe, in said district, was president of said association, and the said John H. Carter, being president and a director of said banking association, did then and there make and cause to be made in said report a certain entry, under the head of loans exceeding the limit, which said entry was then and there in the words and figures following, that is to say: "None," and which said entry so as aforesaid made in said report then and there purported to show, and did, in substance and effect, indicate and declare that there were no loans exceeding the limit held and owned by said national banking association at the close of business on the said 30th day of June, 1910.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the said national banking association, at the close of business on the said 30 day of June, 1910, did hold and own loans exceeding the limit extended to the following companies and corporations: Florida Home Insurance Co., aggregating \$62,500; North Georgia Trust Co., aggregating \$56,043.65; Ludden & Bates South-

ern Music House, aggregating \$85,000.00, as he the said John H. Carter then and there well knew.

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons then doing or who might thereafter do business with said association.

175 And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

26th count: The grand jurors for the United States of America within and for the Western District of North Carolina, upon their oath present:

That on the 8th day of July, 1910, The American National Bank of Asheville, in the city of Asheville, in the county of Buncombe and State of North Carolina, was a national banking association, a body corporate theretofore duly organized and established and then existing and doing business at the city of Asheville and county of Buncombe, in the district aforesaid, under the laws of the United States;

That after the receipt of a request and requisition therefor from the Comptroller of the Currency said association on the 8th day of July, 1910, at the city of Asheville and county of Buncombe, in the district aforesaid, made to said Comptroller of the Currency a certain report, according to the form prescribed by him, verified by the oath of the cashier, and attested by the signature of three of the directors of said association, one of whom was John H. Carter, which said report purported to exhibit in detail and under appropriate heads and resources and liabilities of said association at the close of business of said association on the 30th day of June, 1910, it being the day specified by the said Comptroller of the Currency in his said request and requisition; said report is here shown to the court, but is of too great length to be copied herein.

That on the 8th day of July, 1910, John H. Carter, late of said district, at the city of Asheville, and county of Buncombe, in said district, was president of said association, and the said John H.

176 Carter, being president, and a director, of said banking association, did then and there make and cause to be made in said report a certain entry under the head of liabilities of officers and directors, which said entry was then and there in the words and

figures following, that is to say: Under the head of names of officers and directors and official title—"John H. Carter, President" and opposite the name of John H. Carter, president, under the head of "Liability (individual or firm) as Payers" "None", and under the heading "Checks and Cash Items" and opposite the name of John H. Carter, president, blank or no entry, and which said entry so as aforesaid made in said report then and there purported to show, and did in substance and effect, indicate and declare that the liability (individual or firm) as payers of the said John H. Carter was none, and that the liability of the said John H. Carter for checks and cash items was none.

And the jurors aforesaid, upon their oaths aforesaid, do further present that the said entry so made as aforesaid was then and there false in this, that the liability of the said John H. Carter, as individual and firm, was not then and there none, but amounted to the sum of \$35,150, and the liability of the said John H. Carter for checks and cash items was not none, as indicated by the blank or no entry, but amounted to the sum of \$42,000.00, as he, the said John H. Carter, then and there well knew.

That the false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons then doing or who might thereafter do business with said association.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say: That the said John H. Carter, on the day and year aforesaid, at and in said district and within the jurisdiction of this court, and in the particular and with the intent aforesaid, unlawfully, wilfully, and feloniously did make and cause to be made the said false entry in the said report of the said banking association to the said Comptroller of the Currency of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

A. E. HOLTON, *U. S. Attorney*.

177 (Endorsed:) No. 1236. United States vs. John H. Carter, Buncombe County. Indictment: Violating national bank law. U. S. witnesses: J. G. Merrimon (x), Paul P. Brown (x), J. B. Brandt (x), A. E. Radert (x), L. L. Jenkins. These marked thus (x) sworn by foreman of and in the presence of the grand jury, F. P. Ingle, foreman of grand jury. A true bill. F. P. Ingle, foreman.

178 *Motion to quash indictment—(Asheville).*

U. S. District Court, Asheville, N. C. Filed August 6, 1913.
J. M. Millikan, clerk.

In the District Court of the United States for the Western District
of North Carolina.

UNITED STATES }
vs. }
JOHN H. CARTER. }

Now comes the defendant and moves to quash each of the counts numbered from one to twenty-six, inclusive, of the indictment found at Asheville against him upon the following grounds:

1. Each count is vague, indefinite, and uncertain.
2. Each count is insufficient in its allegations to constitute a criminal offense.
3. Each count sets forth legal conclusions.
4. Each count is bad for duplicity.
5. They are indefinite and uncertain in that they allege certain acts by the defendant as having been done and caused to be done, certain entries made and caused to be made, certain drafts drawn and caused to be drawn, certain credits entered and caused to be entered.

As to each of counts numbered one and two:

1. They are double in that they allege false entries and misappropriation.
2. They allege entries of credits and payments out of moneys, funds, and credits of the bank without specifying whether moneys, or funds, or credits, or how much of each.
3. They allege that certain things were done and caused to be done. The statute does not necessarily make it an offense to cause the things alleged to be done in the manner and form set forth in these counts.

4. They do not sufficiently allege that the North Georgia
179 National Bank, to whom the credits were entered, had no right to receive the credits alleged to have been made and the moneys, funds, and credits alleged to have been paid it.

5. They allege legal conclusions and do not sufficiently negative the authority of the defendant and the North Georgia National Bank, to whom the credits alleged to have been entered were entered, to direct the entry of such credits and to receipt the money thereon by said North Georgia National Bank, nor do they sufficiently negative the right of the defendant as an officer of the bank to do the acts therein alleged.

As to counts three to seven, inclusive:

1. They are indefinite and uncertain in that they allege certain acts as having been done and caused to be done by the defendant, drafts drawn and caused to be drawn, and checks or drafts paid and caused to be paid.

2. They each allege payments out of moneys and credits of the bank without specifying whether moneys, funds, or credits, or how much of each.

3. They each allege the doing or causing to be done of certain things. The statute does not necessarily make it an offense to cause the things alleged to be done in the manner and form set forth in these counts.

4. They do not sufficiently allege that the payees of the checks or drafts had no right to receive the money thereon.

5. They allege legal conclusions and do not sufficiently negative the authority of the defendant and the payees of the drafts to receive the money thereon, nor sufficiently negative the right of the defendant as president or of the cashier as alleged to draw said drafts and cause them to be paid.

6. They do not sufficiently show that the defendant had no right to draw or have drawn the drafts mentioned, and to have same honored.

180 As to counts eight to seventeen, inclusive:

1. They each allege facts and circumstances which do not in logic or law bear out the conclusions alleged.

2. They are duplicitous in that they join the offense of injuring and defrauding the association with the offense of injuring and defrauding other persons, and because they join the offense of defrauding with the offense of deceiving officers of the association and agents appointed to examine its affairs.

As to counts eighteen to twenty-six, inclusive:

1. Each are duplicitous in that they join the offense of an intent to deceive officers and directors of the association with the offense of an intent to deceive agents appointed to examine the officers of the association, and also they join the offense of an intent to deceive officers and directors of the association and agents appointed to examine its affairs with the offense of an intent to deceive other companies, body politic and corporate, and individual persons.

2. They are vague and indefinite because it does not distinctly appear whether the alleged intent to deceive applies to agents appointed to examine the affairs of the corporation and to other companies, body politic and corporate, and individuals or merely to agents appointed to examine the affairs of the association and agents appointed to examine the affairs of other companies, body politic and corporate, and individuals.

3. The allegation of an intent to deceive an agent appointed to examine the affairs of other companies, body politic and corporate, and individual persons and the allegation of an intent to deceive other companies, body politic and corporate, and individual persons does not charge an offense under the statute.

181 4. The allegations in each of these counts of the intent with which the alleged entries were made are vague, uncertain, indefinite, and tend to embarrass the defendant in the preparation of his defense.

As to count numbered twenty-six:

1. It is duplicitous in that it attempts to charge two false entries in one count.

2. The allegation that a certain space in the report mentioned was left blank and that no entry was made therein does not justify the conclusion of the pleader alleged that such blank or no entry was equivalent to writing the word "none," or reporting none, as alleged.

3. It is not an offense to leave a blank or make no entry in a space indicated in a report to the comptroller, as alleged in this count.

And for the reasons stated this defendant moves the court to quash each count of the indictment, and that he may thereupon be discharged and go hence.

THOS. SETTLE,

BLOUNT & BLOUNT & CARTER,

Attorneys for Defendant.

182 *Motion to quash indictment (Greensboro).*

U. S. District Court, Asheville, N. C. Filed August 6, 1913.
J. M. Millikan, clerk.

In the District Court of the United States for the Western District
of North Carolina.

UNITED STATES }
vs. }
JOHN H. CARTER. }

Now comes the defendant and moves to quash each of the counts numbered from one to fifty-four, inclusive, of the indictment found at Greensboro against him upon the following grounds:

1. Each count is vague, indefinite, and uncertain.
2. Each count is insufficient in its allegations to constitute a criminal offense.
3. Each count sets forth legal conclusions.
4. Each count is bad for duplicity.
5. They are indefinite and uncertain in that they allege certain acts by the defendant as having been done and caused to be done, certain entries made and caused to be made, certain drafts drawn and caused to be drawn, certain checks or drafts paid and caused to be paid.

As to each of counts numbered one to twenty-one inclusive:

1. They allege payments out of moneys, funds, and credits of the bank without specifying whether moneys or funds or credits, or how much of each.
2. They allege that certain things were done and caused to be done. The statute does not necessarily make it an offense to cause the things alleged to be done in the manner and form set forth in these counts.

As to counts one and two each,

- 183 1. They do not sufficiently show that the payees of the checks or drafts had no right to receive the money thereon.

As to counts three to twelve, inclusive, each:

1. They allege legal conclusions and do not sufficiently negative the authority of the defendant and the payees of the drafts to receive the money thereon, nor do they sufficiently negative the right of the defendant as an officer of the bank, or of the cashier, as the case may be, to do the acts therein alleged and draw and cause the drafts to be paid.

As to counts thirteen to twenty-one, inclusive, each:

1. They do not show that the drawers of the alleged drafts had no right to draw same and to have same honored.

As to counts twenty-one to thirty-four, inclusive, each:

1. They each allege facts and circumstances which do not in logic or law bear out the conclusions alleged.

2. They are duplicitous in that they join the offense of injuring and defrauding the association with the offense of injuring and defrauding other persons, and because they join the offense of defrauding with the offense of deceiving officers of the association and agents appointed to examine its affairs.

As to counts thirty-five to fifty-four, inclusive, each:

1. Each are duplicitous in that they join the offense of an intent to deceive officers and directors of the association with the offense of an intent to deceive agents appointed to examine the officers of the association, and also they join the offense of an intent to deceive officers and directors of the association and agents appointed to examine its affairs with the offense of an intent to deceive other companies body politic and corporate and individual persons.

2. They are vague and indefinite because it does not distinctly appear whether the alleged intent to deceive applies to agents appointed to examine the affairs of the corporation and to other companies body politic and corporate and individuals, or merely
184 to agents appointed to examine the affairs of the association, and agents appointed to examine the affairs of other companies body politic and corporate and individuals.

3. The allegation of an intent to deceive an agent appointed to examine the affairs of other companies body politic and corporate and individual persons, and the allegation of an intent to deceive other companies body politic and corporate and individual persons does not charge an offense under the statute.

4. The allegations in each of these counts of the intent with which the alleged entries were made are vague, uncertain, indefinite, and tend to embarrass the defendant in the preparation of his defense.

As to counts numbered forty-five and fifty-four, each:

1. They are duplicitous in that they attempt to charge two false entries in one count.

2. The allegation that a certain space in the report mentioned was left blank and that no entry was made therein does not justify the

conclusion of the pleader alleged that such blank or no entry was equivalent to writing the word "none," or reporting none, as alleged.

3. It is not an offense to leave a blank or make no entry in a space indicated in a report to the comptroller, as alleged in these counts.

And for the reasons stated this defendant moves the court to quash each count of the indictment, and that he may thereupon be discharged and go hence.

THOMAS SETTLE,

BLOUNT & BLOUNT & CARTER,

Attorneys for Defendant.

185 U. S. District Court. Filed Aug. 8, 1913. J. M. Millikan, clerk.

District Court of the United States, Western District of North Carolina (at Asheville).

UNITED STATES }
vs. }
JOHN H. CARTER. }

In this case the United States attorney having indicated that it is the purpose of the United States to sue out writ of error from the Supreme Court of the United States to review the judgment of the court sustaining the demurrer to certain counts in the indictment.

It is now ordered that the United States attorney have until the 18th day of August, 1913, to prepare and serve bill of exceptions on the defendant's counsel, and that the defendant have five days after service of the same in which to file exceptions thereto.

This 8th day of August, 1913.

JAS. E. BOYD, *U. S. Judge.*

186 *Bill of exceptions.*

United States District Court, Asheville, North Carolina. Filed September 3rd, 1913. J. M. Millikan, clerk.

District Court of the United States, Western District of North Carolina (at Asheville).

May term adjourned to August, 1913.

UNITED STATES OF AMERICA }
vs. }
JOHN H. CARTER. }

Bill of exceptions.

Be it remembered that on the 7th day of August, 1913, at May term of the U. S. District Court for the Western District of North Caro-

lina, at Asheville, adjourned to August 4, 1913, began and held in the city of Asheville in and for the Western District of North Carolina, his honor, James E. Boyd, judge of said district, presiding, the issues joined upon a demurrer by the defendant in the above-entitled cause between the United States of America and John H. Carter came on before said judge for hearing, the prosecution being represented by A. E. Holton, Esq., United States district attorney, and C. R. Hoey, Esq., assistant United States district attorney, and the defendant by W. A. Blount, F. B. Carter, and Thomas Settle, Esquires.

The defendant is indicted under sec. 5209, R. S., for alleged wilful misapplication of the moneys, funds, and credits of the American National Bank of Asheville, of which he was at the time alleged to have been president, and for alleged false entries in the books of said bank and in reports to the Comptroller of the Currency.

There are two indictments, one found at Greensboro and 187 transferred to Asheville, No. 1168, and the other found at Asheville, No. 1236. These indictments were, upon motion of the U. S. attorney, consolidated without prejudice to the right of defendant to move to quash, plead in abatement, or demur to either of said indictments or to any count thereof in the same manner and to the like effect as if no consolidation had been ordered. The indictment found at Greensboro, No. 1168, contains 54 counts, of which Nos. 1 to 21, inclusive, are for alleged wilful misapplication; Nos. 22 to 34, inclusive, for alleged false entries in the books of the bank; and Nos. 35 to 54, inclusive, for alleged false entries in reports to the Comptroller of the Currency. The indictment found at Asheville contains 26 counts, of which Nos. 1 to 7 are for alleged misapplication; Nos. 8 to 17, inclusive, for alleged false entries in the books; Nos. 18 to 26, inclusive, for alleged false entries in reports to the Comptroller of the Currency.

The defendant demurred to each and every count in the indictments, as appears in the record.

After argument of counsel the court thereupon held that each of said counts Nos. 22 to 54, inclusive, of the indictment so found at Greensboro, and counts Nos. 18 to 26, inclusive, of the indictment found at Asheville as aforesaid, is bad in law, and entered an order sustaining said demurrers to said counts and overruled the demurrer severally as to other counts, which said order is as follows:

"In the District Court of the United States for the Western District of North Carolina.

"UNITED STATES OF AMERICA,

"v.

"JOHN H. CARTER, DEFENDANT.

188 "This cause coming on to be heard upon motions of the defendant to quash the indictments, and the several counts thereof, found against the defendant, one at Greensboro on December

7th, 1912, and the other at Asheville, on May 13th, 1913, upon the several grounds stated in said motions; and by consent of the district attorney given in open court, said motions were treated by the court as demurrers; and the court having heard arguments of counsel for the respective parties; and being advised of its opinion that each of the counts numbered twenty-two to fifty-four, inclusive, of the indictment so found at Greensboro, and counts numbers eighteen to twenty-six, inclusive, of the indictment found at Asheville, as aforesaid, are bad in law; but that the other counts, numbers one to twenty-one, inclusive, of the Greensboro indictment, and counts numbers one to seventeen of the Asheville indictments are good in law:

"It is therefore considered by the court that said motions so treated as demurrers, as to each of the said counts numbered twenty-two to fifty-four, inclusive, of the Greensboro indictment, and counts numbered eighteen to twenty-six, inclusive, of the Asheville indictment, be, and the same are hereby, sustained, and that as to each of said counts the defendant be discharged and go hence; to which ruling the United States excepted, and the exceptions are allowed.

"It is further considered by the court that said motions, so treated as demurrers, as to each of said counts numbered one to twenty-one, inclusive, of the Greensboro indictment, and the counts numbered one to seventeen, inclusive, of the Asheville indictment, be, and the same are hereby, overruled; to which rulings overruling said motions the defendant did except separately and severally, as to each
189 count, and his exceptions are allowed.

"Done in open court, at Asheville, in said district, this August 7th, 1913.

"JAS. E. BOYD, U. S. Judge."

To the ruling and judgment of the court sustaining the demurrers the United States, through A. E. Holton, its attorney, did then and there in open court object and except, and this exception is allowed by the court, and is signed and sealed accordingly.

JAS. E. BOYD, U. S. Judge.

190

Assignment of errors.

U. S. District Court, Asheville, N. C. Filed Sept. 5, 1913. J. M. Millikan, clerk.

District Court of the United States, Western District of North Carolina (at Asheville).

UNITED STATES	} Assignment of errors.
vs.	
JOHN H. CARTER.	

Now comes the United States, the plaintiff in error herein, by A. E. Holton, United States attorney for the Western District of

North Carolina, and in connection with the petition for writ of error herein makes the following assignment of errors and particularly specifies the following as errors upon which it relies and which it will urge upon the prosecution of the said writ of error in the above-entitled cause, and which it avers occurred on the trial of the said cause, to wit:

I.

The court erred in holding that each of said counts Nos. 22 to 54, inclusive, of the indictment found at Greensboro, and counts Nos. 18 to 26, inclusive, of the bill found at Asheville is bad in law, in that the said court held that the said counts and each of them allege that the defendant did "then and there make and cause to be made" a certain entry, referring to the entries in the books of the bank and in the reports to the Comptroller of the Currency, stated as the ground of demurrer, charged no offense, and did not constitute a crime under the construction of the statute upon which the defendant is indicted as the latter should be construed.

II.

191 The court erred in holding that the said counts Nos. 22 to 54, inclusive, of the indictment found at Greensboro, and counts Nos. 18 to 26, inclusive, of the indictment found at Asheville, and each of them is bad in law.

Wherefore the plaintiff in error prays that the said judgment of the District Court of the United States in so far as it sustains the demurrer filed by the defendant be reversed and that speedy justice be done in that behalf.

September 2, 1913.

A. E. HOLTON, *U. S. Attorney*.

192

Petition for writ of error.

U. S. District Court, Asheville, N. C. Filed Sept. 5, 1913. J. M. Millikan, clerk.

District Court of the United States, Western District of North Carolina (at Asheville).

UNITED STATES	} Petition for writ of error.
<i>vs.</i>	
JOHN H. CARTER.	

Now comes A. E. Holton, United States attorney for the Western District of North Carolina and attorney for the plaintiff herein, and says that on the 7th day of August, 1913, this court entered a judgment herein against the plaintiff, the United States, and in favor of the defendant, in which judgment and the proceedings had prior

thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in its behalf for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

September 2nd, 1913.

A. E. HOLTON,

U. S. Attorney and Attorney for Plaintiff.

193

Order allowing writ of error.

U. S. District Court, Asheville, N. C. Filed Sept. 5, 1913. J. M. Millikan, clerk.

District Court of the United States, Western District of North Carolina (at Asheville).

UNITED STATES	} Order allowing writ of error.
<i>vs.</i>	
JOHN H. CARTER.	

Upon motion of A. E. Holton, U. S. attorney and attorney for plaintiff in error, and upon filing a petition.

It is ordered that a writ of error be, and is hereby, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered.

This 2nd day of September, 1913.

JAS. E. BOYD, *U. S. Judge.*

194 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the District Court of the United States for the Western District of North Carolina, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between The United States of America, plaintiff in error, and John H. Carter, defendant in error, a manifest error hath happened, to the great damage of the said The United States, plaintiff in error, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid,

with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 1st day of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 2nd day of September, in the year of our Lord one thousand nine hundred and thirteen.

[SEAL.]

J. M. MILLIKAN,

Clerk of the Dist. Court of the United States.

Allowed by—

JAS. E. BOYD, *U. S. Judge.*

195 UNITED STATES OF AMERICA, ss:

The President of the United States, to John H. Carter, greeting;

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States to be held in the city of Washington, D. C., on the 1st day of October, 1913, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of North Carolina at Asheville, wherein the United States is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error as in the said writ of error mentioned shall not be corrected, and why speedy justice shall not be done to the parties in that behalf.

Witness the Honorable Jas. E. Boyd, judge of the District Court of the United States for the Western District of North Carolina, this the 2nd day of September, 1913.

JAS. E. BOYD, *U. S. Judge.*

T. F. Roland, being duly sworn, says that he is United States deputy marshal for the Western District of North Carolina and as such executed the within citation by delivering a true copy thereof to the defendant John H. Carter in the city of Asheville, N. C., in said district, on the 5th day of September, 1913.

T. F. ROLAND.

Sworn to and subscribed before me this the 26th day of September, 1913.

[SEAL.]

W. S. HYAMS,

Deputy Clerk U. S. District Court.

(Indorsed:) United States vs. John H. Carter. Citation. Original. West. Dist. North Carolina, office U. S. Marshal. Received Sep. 4, 1913. No. 2052. Greensboro, N. C. Executed by delivering a copy to John H. Carter. Sept. 5, 1913. W. E. Logan, M., T. F. Roland, D. M. Fee, \$2.00.

196

Clerk's certificate.

UNITED STATES OF AMERICA,

Western District of North Carolina.

I, J. M. Millikan, clerk of the District Court of the United States for the Western District of North Carolina, certify that the foregoing is a true, full, and complete transcript of the record and proceedings in the two cases, consolidated, United States vs. John H. Carter; prepared in accordance with stipulations filed herein, as fully as the same remains on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the city of Asheville, North Carolina, on this September 15th, A. D. 1913.

[SEAL.]

J. M. MILLIKAN,

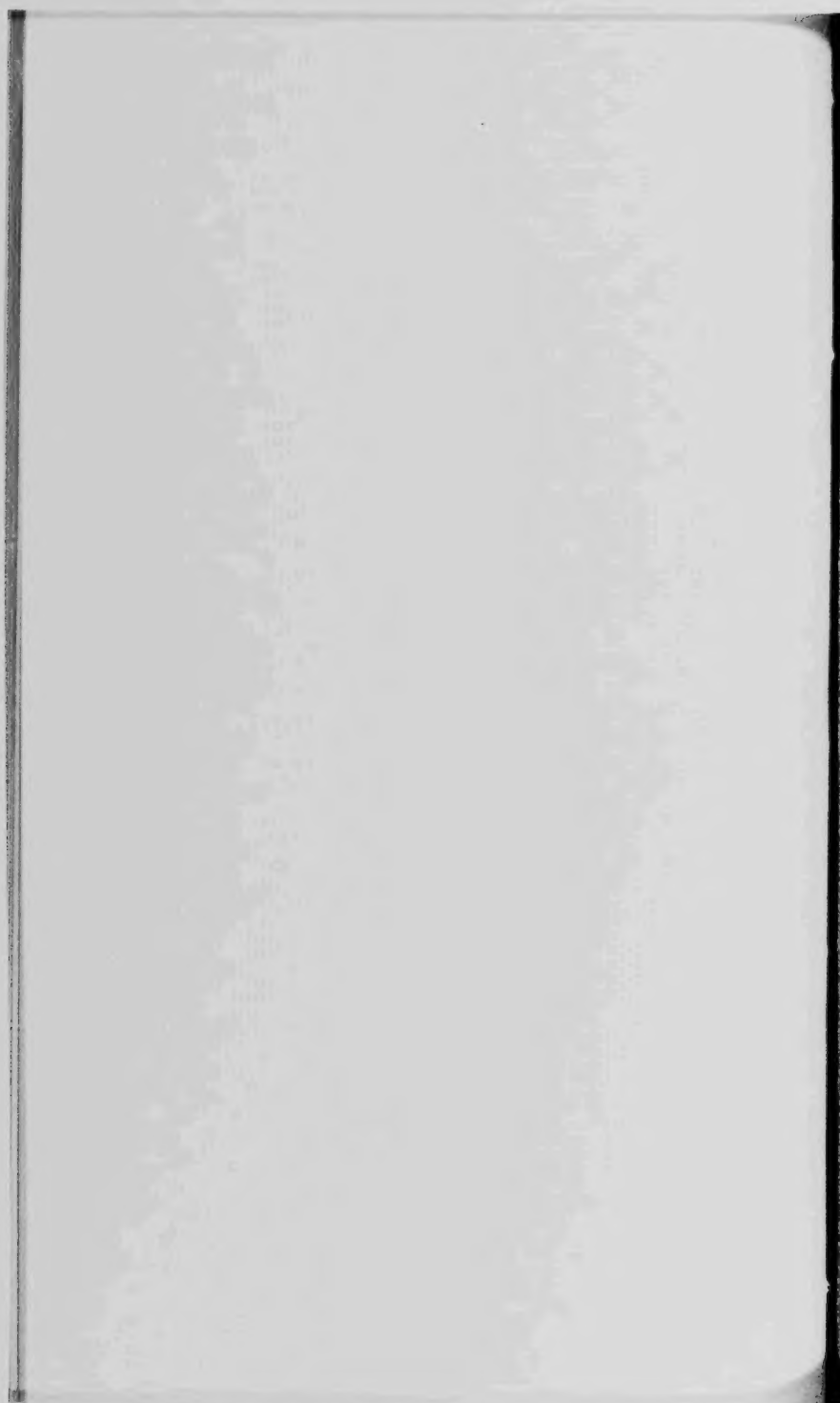
Clerk United States District Court.

By W. S. HYAMS,

Deputy Clerk.

(Indorsement on cover:) File No. 23873. W. North Carolina D. C. U. S. Term No. 722. The United States, plaintiff in error, vs. John H. Carter. Filed September 30th, 1913. File No. 23873.





14
FILED
RECEIVED

OCT 2 1912

JAMES C. HANES

CLERK

No. 732.

In the Supreme Court of the United States

OCTOBER TERM, 1912

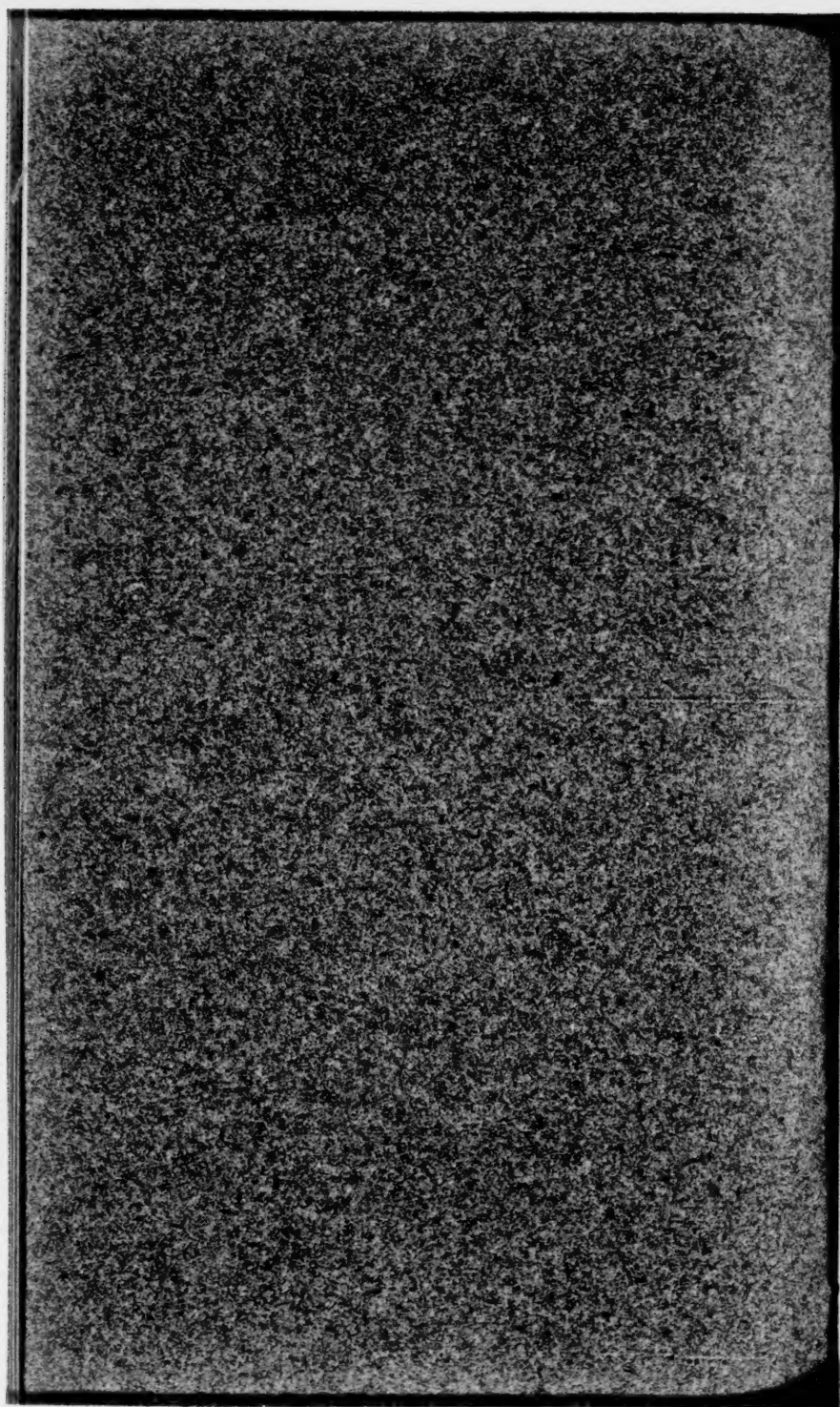
THE UNITED STATES, PLAINTIFF IN ERROR,

JOHN H. CARTER

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF NORTH CAROLINA

VERSUS
JAMES C. HANES, IN OPPOSITION TO
HIS WRIT OF HABEAS CORPUS

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1912



In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 722.
v.	
JOHN H. CARTER.	

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

BRIEF FOR THE UNITED STATES IN OPPOSITION TO
MOTION TO DISMISS.

STATEMENT.

This is a writ of error brought under the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, to review the judgment of the District Court sustaining demurrers to certain counts of two indictments charging the defendant with violations of section 5209 of the Revised Statutes.

The first of these indictments contains 54 counts. Of these, Nos. 1 to 21, inclusive, charge the defendant, who was president of a national bank, with the wilful misapplication of the bank's funds; Nos. 22 to 34, inclusive, charge that he made *and caused to be made* false entries in the books of the bank; Nos.

35 to 54, inclusive, that he made *and caused to be made* false entries in reports to the Comptroller of the Currency. (R., 7-77.)

The second indictment contains 26 counts. Of these, Nos. 1 to 7, inclusive, allege the misapplication of funds; Nos. 8 to 17, inclusive, charge the *making* of false book entries; Nos. 18 to 26, inclusive, charge the making *and causing to be made* of false entries in reports to the Comptroller. (R., 77-112.)

The defendant moved to quash each of the counts in both indictments upon the grounds of uncertainty, duplicity, statement of legal conclusions, insufficiency of allegations to constitute a criminal offense, and uncertainty in alleging certain acts as having been done and caused to be done by the defendant. (R., 113-117.) Additional grounds were assigned as to particular counts. As defendant has abandoned most of these in his brief upon this motion, they need not be recited here.

The court, treating the motions to quash as demurrers, sustained them as to counts 22 to 54, inclusive, of the first indictment, and counts 18 to 26, inclusive, of the second indictment, on the ground that said counts were "bad in law." (R., 118-119.)

Further than this the court could not be induced to go in stating the grounds for its judgment. Opposing counsel will not deny that the district attorney, in preparing his bill of exceptions, sought to embody therein a statement of the court's rea-

sons. The district judge, however, refused to sign a bill of exceptions containing such a statement, and the bill as finally settled assigns no additional grounds. (R., 117-119.)

It is worthy of note, however, that all the counts held bad charge that the defendant made *and caused to be made* certain false entries, and that counts which merely charge that the defendant *made* such false entries (Nos. 8 to 17, inclusive, of the second indictment) were held "good in law." (R., 118-119.) A comparison of these two sets of counts will show that, with the exception just mentioned, there is no substantial difference between them. (R., 11-77, 92-112.)

The question is thus presented whether this court may conclude that the District Court's decision was based on a construction of section 5209, and so take jurisdiction in spite of that court's refusal to state explicitly the grounds of its decision.

ARGUMENT.

I.

The judgment of the District Court involved on its face a construction of section 5209, Revised Statutes.

The counts in question were held to be "bad in law." Is this apt language to describe mere formal defects in the counts? "Bad in law" seems the equivalent of "insufficient in law," *i. e.*, insufficient under the statute on which the indictment is founded.

A holding that the facts charged in an indictment are not within the statute involves the construction of that statute, *United States v. Keitel*, 211 U. S. 370, 385, as does the question whether the indictment charges any offense against the laws of the United States. See *United States v. Sutton*, 215 U. S. 291, 294. Similarly the present judgment should be regarded as based upon an implicit construction of section 5209.

If this court is not inclined, however, to attach this meaning to the words "bad in law," an examination of the record will show that a construction of the statute was necessarily involved.

II.

This court may resort to inference in determining the question of its jurisdiction under the Criminal Appeals Act.

We are met at the threshold by the defendant's contention that this court, in determining whether or not it has jurisdiction under the Criminal Appeals Act, is concluded by the terms in which the court below sustained the demurrer and may not look behind its language to discover whether the judgment necessarily involved a construction of the statute.

It is evident that such an interpretation of the Criminal Appeals Act would empower the district judge in each case to deprive this court of appellate jurisdiction thereunder, if he felt so disposed,

by the simple expedient of sustaining a demurrer without assigning any reasons therefor—a practice which it may be assumed this court would not regard with favor. An interpretation which involves such consequences is clearly to be avoided unless rendered inevitable by the language or purpose of the act.

Certainly nothing in its language necessitates this construction. The act authorizes the United States to come here by writ of error

from a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded. (34 Stat. 1246.)

The jurisdictional fact under this provision is a judgment based upon the invalidity or construction of the statute. Obviously a judgment may be so based although the court does not construe the statute in terms.

The construction urged is equally foreign to the purpose of the act, *i. e.*, to enable the United States to obtain a decisive construction of penal statutes by this court. That purpose would be largely defeated if this court were restricted to the language of the District Court in determining its own jurisdiction.

The narrow interpretation contended for has also been impliedly rejected by this court.

In *United States v. Adams Express Company*, 229 U. S. 381, 388, this court assumed its power to go behind the entry of judgment in order to determine whether the decision was based upon a construction of the statute.

In *United States v. George*, 228 U. S. 14 (relied on by defendant), an indictment for perjury was demurred to on the ground that there was no law requiring the defendant to take oath as to the matters set out therein. This demurrer was simply sustained "on the grounds specified therein" without opinion, as the record shows; although the bill of exceptions did recite the reasons for the ruling. (See p. 18.) While this court expressed doubts of its jurisdiction because of the inconsistent positions taken by the Government, in the trial court and here, as to what statute the indictment was based on, it nevertheless took jurisdiction and decided the case upon the merits.

The other cases cited by defendant, *United States v. Keitel*, *supra*, and *United States v. Stevenson*, 215 U. S. 190, merely establish the proposition (with which we have no dispute) that where "the court below proceeded upon two grounds, one of which concerned the construction of the statute, the other of which decided the invalidity of the indictment upon general principles of criminal law," this court can not pass upon the latter question. 215 U. S. 195. Both cases are conclusive, however, of the point that under such circumstances

this court *will* decide the question of statutory construction involved.

If, therefore, it appears that the construction of the statute was actually involved in the judgment below, this court will take jurisdiction, although that judgment may also have been based in part upon other grounds not reviewable here.

In this respect this court's jurisdiction under the Criminal Appeals Act differs from its jurisdiction to issue writs of error to State courts, where the judgment below must rest exclusively upon the decision of a Federal question in order to be brought here. *Eustis v. Bolles*, 150 U. S. 361, 366. Hence the rules adopted in that class of cases are not, as suggested by defendant, applicable to the present situation. And even in those cases, if the independent ground on which the State court's judgment might have been based was not a good and valid one, that judgment is presumed to be based on the law raising the Federal question, and this court will then take jurisdiction. *Eustis v. Bolles, supra*, at 367.

III.

It is apparent from the record that the judgment of the court below must have been based upon a construction of the statute.

We have heretofore mentioned the fact that all the counts charging the defendant with making *and causing to be made* certain false entries were held bad, while all the counts which charge him

merely with *making* such entries were held good; and that no other substantial distinction exists between these two sets of counts.

The natural inference is that the court, in holding as it did, based its decision upon this sole ground. In other words, it held that a count charging that a bank president made *and caused to be made* certain false entries in the books of the bank and reports to the Comptroller was insufficient under section 5209.

Defendant, apparently recognizing this line of demarcation, contends that nevertheless no construction of the statute was involved, but that the judgment may well have been based on the fifth general ground of demurrer, *i. e.*, that such allegations rendered the counts in question indefinite and uncertain.

But this contention proves too much. All of the counts in both indictments are demurred to on the ground that "they allege certain acts by the defendant as having been done and caused to be done" (R., 113, 115); an examination of the record will show that all except counts 8 to 17 of the second indictment do contain such allegations. If one count was thereby rendered bad for uncertainty, so were the rest. It may be safely assumed that the court below did not arbitrarily throw out some counts on this ground and refuse to reject others of similar character.

Defendant also suggests that the allegations of making and causing to be made "are inconsistent,

or repugnant, for defendant could not do both,—make and cause to be made.” (Defendant’s brief, 5-6.)

Repugnancy was not one of the grounds assigned in the motions to quash. Perhaps what the defendant has in mind is duplicity, which was assigned. Assuming that the court rested its judgment on this objection, in doing so it necessarily construed the statute. True, section 5209 says nothing about causing to be made; the offense which it describes is *making* false entries. But if the latter phrase includes the former, there can be no duplicity or repugnancy in a count containing both charges, since one would be implied from the other if it were not expressed. Whether this be so or not, however, is a question of statutory construction, and not a matter of criminal pleading.

It is highly improbable, however, that the judgment of the District Court rested either upon uncertainty, repugnancy, or duplicity. Where a statute may be violated in one of two ways it is common practice to allege the violation in the conjunctive, and this court has more than once upheld such allegations. *Crain v. United States*, 162 U. S. 625, 634; *Wiborg v. United States*, 163 U. S. 632; *Anderson v. United States*, 170 U. S. 481, 500. In indictments under the National Banking Law this is the usual mode of charging the making of false entries by a bank officer and has been frequently sustained by the courts. *United States v. Harper*

(C. C. Oh.), 33 Fed. 471, 480; *United States v. Youtsey* (C. C. Ky.), 91 Fed. 864, 874; *Coffin v. United States*, 162 U. S. 664, 665, 678.

It therefore seems safe to conclude that the judgment below went on the theory that the charge of making false entries *and causing them to be made* did not state an offense under section 5209. We are not now concerned with the correctness of that construction of the section.

The defendant, however, has suggested other possible reasons for the court's ruling besides those heretofore discussed.

(1) It is stated that "counts numbered 22 to 34 of indictment No. 1168 (the first indictment) are also subject to the objection that they are double, because they allege both an intent to defraud and to deceive," and authorities are cited to support this assertion. (Defendant's brief, 6-7.)

Assuming its accuracy, it can not afford defendant much comfort in the present case, since counts 8 to 17 of the second indictment contain precisely the same allegations as to intent, but were nevertheless held good.

(2) The allegations of intent in counts 35 to 54 of the first indictment and counts 18 to 26 of the second indictment are also objected to.

The language of that allegation is as follows:

That said false entry was then and there made as aforesaid with the intent then and there on the part of him, the said John H. Carter, to deceive the officers and directors

of said association, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said association, and other companies, bodies politic and corporate, and individual persons then doing or who might thereafter do business with said association. (R., 53, 102.)

It is urged that the intent to deceive such "other companies, bodies politic and corporate, and individual persons" is not a crime under the statute, and hence that "the allegations including them only tend to embarrass and confuse." (Defendant's brief, 7.) This tendency we fail to discern. If the allegations in question are surplusage, defendant is happily relieved from the necessity of preparing to meet them, for the court would not admit evidence on such immaterial issues to his prejudice. Such allegations are simply to be ignored, and in no way vitiate the indictment. *United States v. Northway*, 120 U. S. 327, 330; *In re Lane*, 135 U. S. 443, 448; *Coffin v. United States*, 162 U. S. 664, 686; *Hall v. United States*, 168 U. S., 632, 639.

Defendant argues with elaboration that under *Ex parte Bain*, 121 U. S. 1, these allegations, even if surplusage, can not be stricken from the indictment. Undoubtedly that is true. As has been shown, however, there is no necessity of striking them from the indictment.

But be this objection ever so well taken, only part of the counts held bad are open to it. Counts 22 to

34 of the first indictment lacked that superfluous allegation and yet were held bad. It may fairly be inferred that the alleged surplusage had nothing to do with the decision, or at least that the decision rested upon some other basis as well. As we have shown by a process of elimination, that basis must have been a construction of section 5209.

CONCLUSION.

The motion to dismiss should be denied.

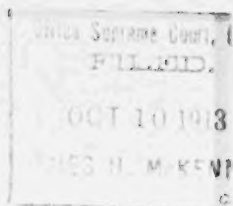
JOHN W. DAVIS,

Solicitor General.

NOVEMBER, 1913.



No. 722.



In the Supreme Court of the United States,

OCTOBER TERM, A. D., 1913.

UNITED STATES,

Plaintiffs in Error,)

vs.)

JOHN H. CARTER,

Defendant in Error.)

*Writ of Error to the
District Court, West-
ern District of North
Carolina.*

MOTION TO DISMISS.

Now comes the defendant, and represents to this Court that on August 7th, 1913, the Court below sustained demurrers to forty-three (43) counts in two indictments against him, which sought to charge offenses under Sec. 5209, R. S.; that the counts so found to be bad were numbers 22 to 34, for alleged false entries in books, and numbers 35 to 54 for alleged false entries in reports to the Comptroller, of indictment number 1168 found at Greensboro, and counts numbers 18 to 26, for alleged false entries in reports to the Comptroller, of indictment number 1236, found at Asheville; that the grounds of demurrer included objections to each count for vagueness, indefiniteness, uncertainty, duplicity, insufficiency of allegations to charge a criminal offense and for alleging legal conclusions, as well as objections that the statute does not necessarily make it an offense to cause the things alleged to be done in the manner and form alleged, and other specific objections to the several counts more fully shown by the record; that the grounds of demurrer raised many questions not solvable by construction of the Statute, but depending upon general principles of criminal law and pleading; that

neither the order of the Court, nor anything in the record shows the specific grounds of demurrer upon which the decision was based, the order entered being a general order sustaining the demurrers; that the writ of error is sought to be maintained under Chap. 2561, Act approved March 2nd, 1907, (34 Stat. 1246,) and defendant, believing this Court to be without authority to review the judgment, moves that this writ of error be dismissed for lack of jurisdiction, because:

1. It does not appear that the judgment from which the writ is taken is based upon the invalidity or construction of the Statute upon which the counts are founded;

2. It does appear that the demurrers sustained contain grounds not based upon the invalidity or construction of the Statute upon which the counts quashed are founded, and it does not appear that the demurrers were not sustained upon these grounds;

3. It does appear that the demurrers sustained contain grounds not based upon the invalidity or construction of the Statute upon which the counts quashed are founded, and it does not appear that such grounds are so palpably unfounded that they cannot be presumed to have been entertained by the Court below as the basis for its decision on the demurrers.

4. It does appear that the demurrers sustained contain grounds not based upon the invalidity or construction of the Statute upon which the counts quashed are founded, and such grounds are good and valid ones, sufficient of themselves to sustain the judgment on the demurrers.

Francis B. Carter
W. A. Rhoads
 Attorneys for Defendant in Error.

HON. J. C. McREYNOLDS, Attorney General,
Washington D. C.

TAKE NOTICE that the motion, of which the above is
a copy, will be brought on for hearing on Monday, the 3rd
day of November, A. D. 1913.

Francis B. Carter
W. A. Mount
Attorneys for Defendant in Error.

Service accepted, and copy of brief received,
this _____ day of October A. D. 1913.

Attorney General.

Office Supreme Court.

FILED.

OCT 7 1913

JAMES H. MCKEN

No. 722.

In the Supreme Court of the United States,

OCTOBER TERM, A. D., 1913.

UNITED STATES,

PLAINTIFFS IN ERROR,

VS.

JOHN H. CARTER,

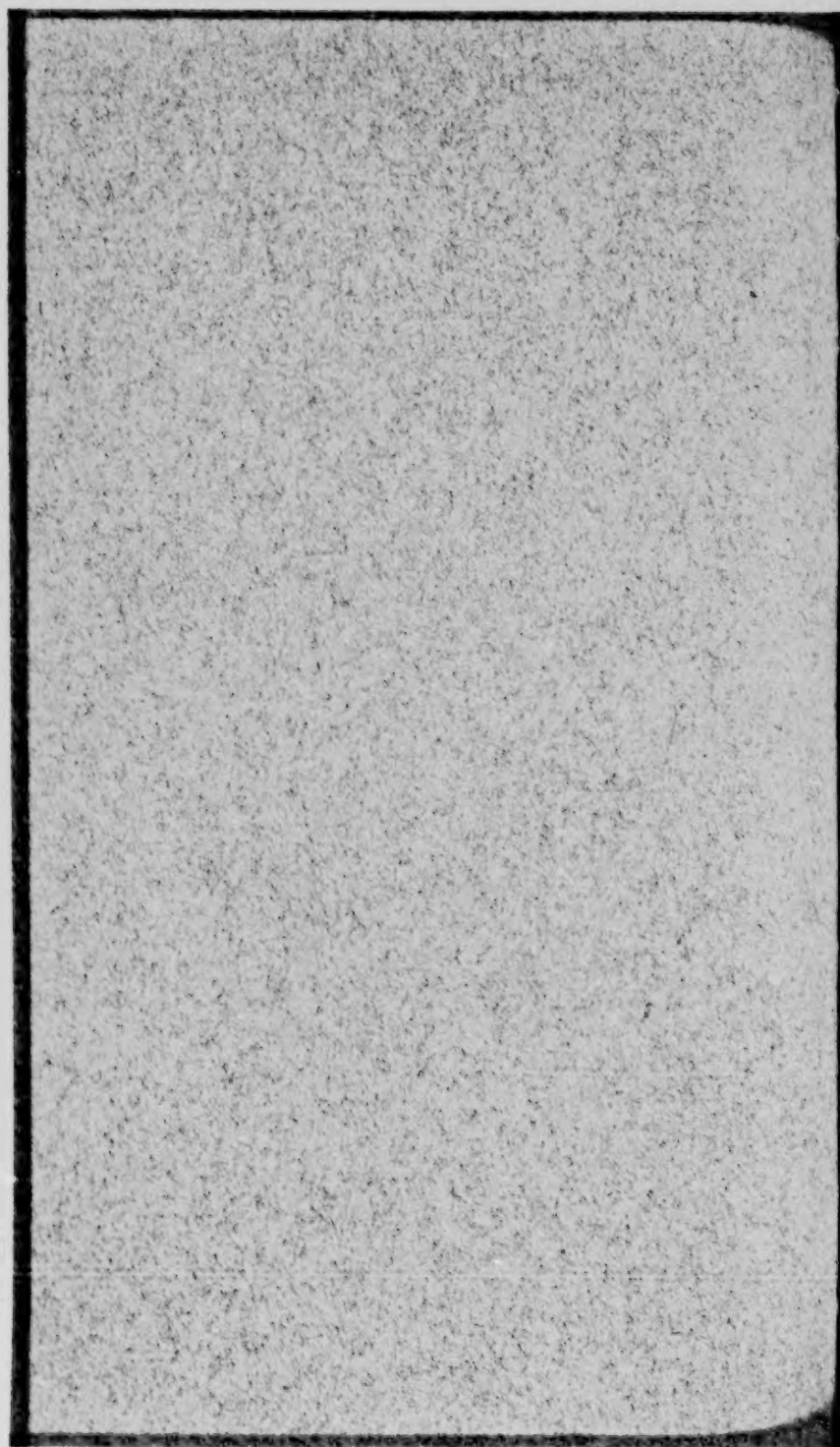
DEFENDANT IN ERROR.

*Writ of Error to the
District Court, West-
ern District of North
Carolina.*

BRIEF OF

W. A. BLOUNT AND F. B. CARTER, ATTORNEYS FOR
DEFENDANT IN ERROR, ON MOTION TO DISMISS.

The White Printing Company, Pensacola.



In the Supreme Court of the United States,

OCTOBER TERM, A. D., 1913.

UNITED STATES,

PLAINTIFFS IN ERROR,

VS.

JOHN H. CARTER,

DEFENDANT IN ERROR.

*Writ of Error to the
District Court, West-
ern District of North
Carolina.*

BRIEF OF

W. A. BLOUNT AND F. B. CARTER, ATTORNEYS FOR
DEFENDANT IN ERROR, ON MOTION TO DISMISS.

By this motion it is asserted that this Court is without jurisdiction under the Act approved March 2nd, 1907, (34 Stat. 1246), because,

1. It does not appear that the judgment from which the writ was taken is based upon the invalidity or construction of Sec. 5209 R. S.

2. Grounds of demurrer not based upon the invalidity or construction of Sec. 5209 R. S. were interposed, and it does not appear that the judgment is not based on these grounds.

3. Grounds of demurrer not based upon the invalidity or construction of Sec. 5209 R. S. were interposed, and they are not so palpably unfounded as that they can be presumed not to have been the basis for the judgment.

4. Grounds of demurrer not based upon the invalidity or construction of Sec. 5209 R. S. were interposed, and such grounds are good and valid ones, sufficient of themselves to sustain the judgment.

Demurrers were sustained to forty-three (43) counts, all seeking to hold defendant for alleged false entries, either in the books of a National Bank, or in its reports to the Comptroller, in violation of Sec. 5209 R. S. Counts numbered 22 to 34,—indictment No. 1168 found at Greensboro, are for entries in books, and are precisely the same, except as to dates, description of books and entries therein. Each alleges that defendant, as President of a named National Bank, being required to make and cause to be made certain entries of the transactions and dealings of the bank, to-wit, an account and record in a named book of certain stated matters, did then and there, on a day named, wrongfully, willfully, unlawfully, feloniously, and with intent to injure and defraud said Bank, and divers other persons to the jurors unknown, and to deceive the Directors of said Bank and agents appointed to examine its affairs, make and cause to be made a certain false entry in a certain account, describing it, for the purpose of and thereby making said account to show a certain state of facts set forth, whereas in truth and in fact the matters so shown did not occur, or were other or different than so shown, he, the defendant, well knowing the same, and well knowing said entry to be false, contrary to the form of the Statute.

Counts numbers 35 to 51 of the same indictment, and counts numbers 18 to 26 of indictment number 1236, found at Asheville, are for entries in the reports of said Bank to the Comptroller, and are substantially in the same

language, except as to dates, description of reports, and entries therein. Each alleges that a report of the resources and liabilities of the bank upon a form furnished by the Comptroller was called for on a certain date; that defendant being President and a Director of the Bank, did then and there make and cause to be made in said report a certain entry under a certain head, the entry being set forth, which said entry purported to show and did in substance and effect indicate and declare a certain state of facts set forth; that the entry so made was then and there false, in that the state of facts indicated did not exist, or was other or different than as indicated, as he the defendant then and there well knew; that said false entry was made with intent then and there on part of defendant to deceive the officers and directors of the Bank, and any agent then appointed, or who might thereafter be appointed to examine its affairs, and other companies, bodies politic and corporate, and individual persons then doing, or who might thereafter do business with said Bank, and concludes with the statement that the jurors do say that said defendant, on the day, in the district, in the particular and with the intent aforesaid, unlawfully, willfully and feloniously did make and cause to be made the said false entry in said report, contrary to the form of the Statute.

Grounds of demurrer to each of these counts, not involving the validity or construction of the Statute, are that it is vague, indefinite, uncertain, insufficient in allegation to charge a criminal offense, sets forth legal conclusions, is bad for duplicity, and that it is indefinite and uncertain in that it alleges that certain entries were made and caused to be made.

Additional grounds of demurrer specially applicable to each count numbered 22 to 34, of indictment No. 1168, are that it alleges facts and circumstances which do not justify the conclusions alleged, and is double in joining the intent

to injure and defraud the Association, with the intent to injure and defraud other persons, and the intent to injure and defraud with the intent to deceive officers of the Bank and agents appointed to examine its affairs.

Additional grounds of demurrer specially applicable to each count numbered 35 to 54 of indictment No. 1168, and numbered 18 to 26 of indictment No. 1236, are that it is double and that it joins the intent to deceive officers of the Bank with the intent to deceive agents appointed to examine its affairs; and the intent to deceive officers and agents, with the intent to deceive other companies, body politic and individuals; it is not an offense to make the entry complained of, with intent to deceive an agent appointed to examine the affairs of other companies, bodies politic and corporate and individuals, nor with intent to deceive other companies, bodies politic and corporate and individuals doing or who might thereafter do business with the Bank, and that the allegations of intent with which the entries were made are vague, uncertain, indefinite and tend to embarrass the defendant in the preparation of his defense.

The order sustaining the demurrers is general, and there is nothing in the record showing the grounds upon which the order was made.

The act of March 2, 1907, (34 Stat. 1246) allows a writ of error in this class of cases only "from a judgment sustaining a demurrer to any count of an indictment, where such judgment is based upon the invalidity or construction of the Statute upon which the indictment is founded." No question decided by the Court below, other than those mentioned in the Statute, is open for review by this Court.

U. S. vs. Keitel, 211 U. S. 370.

If the judgment is founded upon general principles of criminal law and practice, no writ of error lies; if founded

upon such principles and also upon the invalidity or construction of the Statute the writ lies but the power to review is limited to a consideration of the validity or construction of the Statute.

U. S. vs. Stevenson, 215 U. S., 190.

The order sustaining the demurrers being general, it does not affirmatively appear that this Court has jurisdiction and the writ of error should be dismissed.

See U. S. vs. George, 228 U. S., text 18.

If, however, this Court will resort to inference in determining its jurisdiction as it does in cases of writs of error to State Courts, it will, no doubt, apply the rule laid down in

Eustis vs. Bolles, 150 U. S. 361,

which is that jurisdiction will not be entertained if the grounds of demurrer not based upon the invalidity or construction of the Statute are good and valid ones, sufficient in themselves to sustain the judgment; or if they are not so palpably unfounded as that they will be presumed not to have been entertained by the Court below as a basis for the judgment. In our opinion, the Court should dismiss the writ of error, unless the other grounds are frivolous, or so obviously untenable as to require no argument to demonstrate it, otherwise the Court will be doing the very thing which the Statute gives it no authority to do.

We submit that these other grounds were not palpably unfounded. Every count quashed is vague, indefinite, uncertain, and so framed as to confuse and embarrass the defense.

The charge in each is that defendant was required to *make* and *cause* to be made, and that he *made* and *caused* to be made a certain entry. These allegations are inconsistent, or repugnant, for defendant could not do both.—

make and cause to be made. As here used, "make" implies, and is confined to the personal act of defendant, and "caused to be made" implies and is confined to the personal act of some other person brought about by reason of some action or non-action on the part of defendant. The full allegation "made and caused to be made" a particular written entry, is an assertion that defendant personally made it and at the same time that he did not personally make it, but that he either did or said, or omitted to do or say, something which resulted in the entry being made by another. The allegation of the causing is a mere legal conclusion. No particulars are given, so that the defendant can prepare his defense to this allegation, and so the Court can see that the causing comes within the statute. Who knows with any degree of certainty in what manner the grand jury intended to charge defendant's responsibility for the false entries? What would the Court think of an indictment for unlawful homicide or larceny, or embezzlement, which alleged that defendant unlawfully killed and caused to be killed, stole, took and carried away, and caused to be stolen, taken and carried away, embezzled and caused to be embezzled, with no particulars of the causing given? Possibly such an allegation would not be ill in charging an offense in which the statutory or common law definition included the expression "make or cause to be made" where the manner of making or causing was given, for in such case the indictment would follow the language of the definition.

But we submit that the use of the language objected to here is not justified by the rules of good pleading. And to say the least, the objection is not so frivolous that this Court can say it was not the basis for the ruling of the District Court.

The counts numbered 22 to 34 of indictment No. 1168 are also subject to the objection that they are double, be-

cause they allege both an intent to defraud and to deceive. This precise point is thoroughly considered and expressly decided as we contend for, in the well reasoned opinion in

U. S. vs. Norton, 188 Fed. 260.

See also

U. S. vs American Naval Stores Co., 186 Fed. 592.

The remaining counts of this indictment, as well as all the counts of the other indictment, contain allegations of an intent to deceive officers of the Bank, examining agents appointed by the Comptroller, and individuals then doing, or who might thereafter do, business with the Bank. They also allege an intent to deceive either other companies, bodies politic and corporate, or agents appointed to examine the affairs of such other companies, bodies politic and corporate, the language used in charging this phase of the intent being somewhat ambiguous. As the Statute, Sec. 5209, R. S., does not mention an intent to deceive the last named class of persons, companies and corporations or examining agents, it is clear that the intent to deceive them is not a crime, and the allegations including them only tend to embarrass and confuse. It was contended by the District Attorney in the Court below that such allegations, as well as the allegations with respect to causing the entries to be made, were surplusage, and might be rejected, and this contention may be renewed in this Court, but we respectfully submit that this question cannot be decided by this Court upon this writ of error, for it does not involve a question of the construction or validity of the Statute, but of general law relative to criminal pleading and practice. Whether these matters can be rejected as surplusage was a question to be decided by the District Court, and its decision is beyond the power of this Court to review in this case.

But the allegations, if surplusage, cannot be rejected. In

Ex parte Bain, 121 U. S. 1,

the Circuit Court permitted the District Attorney to strike from an indictment founded upon this Statute an allegation that the entry was made with intent to deceive the Comptroller, leaving, however, in the indictment, an allegation of intent to deceive an examining agent. The Court below permitted the allegation to be stricken, upon the theory that it was immaterial and surplusage, and being such, no injury was done to the defendant in striking it. But this Court in a *collateral* proceeding, by habeas corpus, held that such action was unauthorized, even though the matter stricken was surplusage, and that defendant was entitled to be relieved from the conviction had. And if the Court has no power to strike such allegation by affirmative act, it surely can not be held that it possesses the power to accomplish precisely the same result by a ruling eliminating the supposed surplusage from further consideration, upon a demurrer to the indictment. For, as we have shown, the allegation "and cause to be made" materially qualifies the meaning of the word "make" immediately preceding it, and by rejecting such words the meaning of the word "make" is enlarged, thereby changing the construction of the indictment most materially. The matters sought to be stricken are descriptive of the manner of committing the offense, and cannot, therefore, be rejected.

In the *Bain* case, *supra*, the Court very pertinently asks how any Court could say that there may not have been more than one grand juror who was satisfied that the false report was made to deceive the Comptroller, let not convinced that it was made to deceive anybody else, and how could it be said that with the supposed surplus words eliminated, the indictment was the bill found by the grand jury? In this case how can the Court say that there may

not have been more than one grand juror who was satisfied that the alleged false report was made to deceive other companies, corporations, and individuals doing business with the Bank, and that defendant caused, in some unexplained and probably non-criminal manner, the entries to be made, but who was not convinced that the report was made to deceive anybody else, or that defendant made the entries himself. And how can the Court say that the indictment thus altered is the bill found by the grand jury. We submit that the Court could not by indirection do that which it could not do directly, and that at any rate so long as the Bain case remains unreversed, it cannot be said that the Court below was palpably wrong in applying it to this case.

The objections which we have argued apply to every count to which the demurrers were sustained. There were other objections to many of the counts, but as they do not apply to the whole, we do not argue them, for we assume the Court will not dismiss the writ of error, if there is any one or more of the counts which can be reviewed.

But for reasons stated, which apply to all the counts, we respectfully submit that this writ of error should be dismissed.

Francis B. Clark

Mr. A. Blount

 Attorneys for Defendant in Error.